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Attorneys for Plaintiff Colony Cove Properties, LLC  
15

16 **UNITED STATES DISTRICT COURT**

17 **CENTRAL DISTRICT OF CALIFORNIA**

18 COLONY COVE PROPERTIES, LLC,  
19 a Delaware limited liability company,

20 Plaintiff,

21 v.

22 CITY OF CARSON, a municipal  
23 corporation; CITY OF CARSON  
MOBILEHOME PARK RENTAL  
24 REVIEW BOARD, a public  
administrative body; and DOES 1 to 10,  
25 inclusive,

26 Defendants.  
27  
28

Case No. CV 14-03242 PSG (PJWx)

**DECLARATION OF MATTHEW  
W. CLOSE IN SUPPORT OF  
PLAINTIFF'S MOTIONS IN  
LIMINE NOS. 1-8**

Hearing: April 5, 2016 at 9:00 a.m.

Courtroom: 880

Judge: Hon. Philip S. Gutierrez

Trial Date: April 5, 2016

1 I, Matthew W. Close, hereby state and declare as follows:

2 1. I am a member in good standing of the State Bar of California and am  
3 admitted to practice before this Court. I am a partner of O'Melveny & Myers LLP,  
4 counsel of record for Plaintiff Colony Cove Properties, LLC ("Colony Cove"). I  
5 have personal knowledge of the facts set forth below, and, if called upon, I could  
6 and would testify to the truth of the following.

7 2. Attached hereto as **Exhibit 1** is a true and correct copy of Defendant  
8 City of Carson's Special Interrogatories to Plaintiff, Colony Cove Properties, LLC  
9 (Set One), served on Colony Cove on or around September 3, 2015. On page 9,  
10 Defendant City of Carson propounded discovery requesting that Colony Cove  
11 "state, in as much detail as YOU are able, the actions YOU took, if any, to  
12 determine if any residents of THE PARK could afford any of the rent increases  
13 YOU applied for at THE PARK."

14 3. Attached hereto as **Exhibit 2** is a true and correct copy of Defendant  
15 City of Carson's Responses to Plaintiff Colony Cove Properties, LLC's Request for  
16 Production of Documents Propounded on Defendant City of Carson, Set No. One,  
17 including Defendant City of Carson's Privilege Log for Documents Relating to  
18 Plaintiff's RFP No. One to City of Carson, served on Colony Cove on or around  
19 October 26, 2015. Defendant City of Carson invoked the deliberative-process  
20 privilege on pages 3–7 of its Responses and on pages 1–17, 19–27, and 44–48 of its  
21 Privilege Log.

22 4. On December 3, 2015, Colony Cove served Defendants City of Carson  
23 and City of Carson Mobilehome Park Rental Review Board (collectively,  
24 "Defendants") with former Mayor Jim Dear's deposition subpoena. On December  
25 30, 2015, Defendants' counsel sent an email to Plaintiff's counsel agreeing to  
26 produce former Mayor Dear for deposition on January 22, 2016. Nine days later,  
27 on January 8, 2016, Defendants stated in an email that former Mayor Dear would  
28 be unavailable on January 22. Defendants have not provided Colony Cove with

1 another date on which former Mayor Dear would be available for deposition.

2 Attached hereto as **Exhibit 3** is a true and correct copy of an email Jeff Malawy,  
3 counsel for Defendant City of Carson, sent to Plaintiff's counsel on January 8,  
4 2016, wherein he stated former Mayor Dear would be unavailable for deposition on  
5 January 22, 2016.

6 5. Attached hereto as **Exhibit 4** is a true and correct copy of excerpts of  
7 the transcript of James F. Goldstein's deposition, taken on December 18, 2015.

8 6. Attached hereto as **Exhibit 5** is a true and correct copy of excerpts of  
9 the transcript of Ken Freschauf's deposition, taken on January 15, 2016.

10 7. Attached hereto as **Exhibit 6** is a true and correct copy of Kenneth K.  
11 Baar's report titled, "Analysis of Reasonable Investment Backed Expectations of  
12 Colony Cove Mobile Estates and Discussion of Treatment of Debt Service and  
13 Rationale for Maintenance of Net Operating Income Fair Return Standard under  
14 Rent Regulation (Carson, California)," dated January 2016 (exhibits omitted).

15 8. Attached hereto as **Exhibit 7** is a true and correct copy of City of  
16 Carson's Guidelines for Implementation of the Mobilehome Space Rent Control  
17 Ordinance, adopted February 17, 1998, through City Council Resolution No. 98-  
18 010.

19 9. Attached hereto as **Exhibit 8** is a true and correct copy of excerpts of  
20 the transcript of Kenneth K. Baar's deposition, taken on February 2, 2016.

21 10. Attached hereto as **Exhibit 9** is a true and correct copy of an excerpt of  
22 Kenneth K. Baar's Curriculum Vitae.

23 11. Attached hereto as **Exhibit 10** is a true and correct copy of the Expert  
24 Report of Peter A. Salomon, CPA, CFF, dated January 11, 2016 (exhibits omitted).

25 12. Attached hereto as **Exhibit 11** is a true and correct copy of City of  
26 Carson Staff Report to Mobilehome Park Rental Review Board, dated February 13,  
27 2008 (exhibits omitted).

28

13. Attached hereto as **Exhibit 12** is a true and correct copy of James Brabant, MAI's report titled "Rent Increase Application Colony Cove Mobile Estates," dated June 5, 2008.

14. Attached hereto as **Exhibit 13** is a true and correct copy of Defendants' Expert Witness Disclosure [FRCP 26(a)(2)], served on Colony Cove on or around January 11, 2016 (attachment and exhibits omitted).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on February 22, 2016, in Los Angeles, California.

/s/ Matthew W. Close  
Matthew W. Close



# **EXHIBIT 1**



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10 Attorneys for Defendants  
 CITY OF CARSON and CITY OF  
 11 CARSON MOBILEHOME PARK  
 RENTAL REVIEW BOARD

12 **UNITED STATES DISTRICT COURT**  
 13 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**  
 14

15 COLONY COVE PROPERTIES, LLC  
 16 a Delaware limited liability company,

17 Plaintiff,

18 v.

19 CITY OF CARSON, a municipal  
 corporation; CITY OF CARSON  
 20 MOBILEHOME PARK RENTAL  
 REVIEW BOARD, a public  
 21 administrative body; and DOES 1 to 10,  
 inclusive,

22 Defendants.  
 23

Case No. CV14-03242 PSG (PJWx)

Assigned to:  
 Hon. Philip S. Gutierrez  
 Courtroom: 880

**CITY OF CARSON'S SPECIAL  
 INTERROGATORIES TO  
 PLAINTIFF, COLONY COVE  
 PROPERTIES, LLC (SET ONE)**

[Served concurrently with City of  
 Carson's Request for Production of  
 Documents and Things to Plaintiff,  
 Colony Cove Properties, LLC (Set  
 One)]

Trial Date: April 5, 2016

26 PROPOUNDING PARTY: Defendant, CITY OF CARSON

27 RESPONDING PARTY: Plaintiff, COLONY COVE PROPERTIES, LLC

28 SET NO.: ONE

1 **TO PLAINTIFF, COLONY COVE PROPERTIES, LLC AND TO ITS**  
 2 **ATTORNEY(S) OF RECORD HEREIN:**

3 Defendant, CITY OF CARSON ("Defendant" or "Propounding Party") hereby  
 4 propounds the following special interrogatories pursuant to Rule 33 of the *Federal*  
 5 *Rules of Civil Procedure* and Rules 33.1-.3 of the Central District Local Rules.  
 6 Defendant requests that Plaintiff COLONY COVE PROPERTIES, LLC ("Plaintiff")  
 7 answer, under oath, the following interrogatories within thirty (30) days.

8 **DEFINITIONS AND INSTRUCTIONS**

9 1. In answering these interrogatories, you are required to furnish all  
 10 information available to you, including information in the possession of your attorneys  
 11 or investigators, or other persons who are directly or indirectly employed by them or by  
 12 you, or connected with you or your attorneys, and anyone else acting in your behalf or  
 13 otherwise subject to your control.

14 2. Your answers must be served within 30 days after you are served with  
 15 these interrogatories.

16 3. Each answer must be immediately preceded by a quote of the interrogatory  
 17 to which it pertains.

18 4. Each answer must be as complete and straightforward as the information  
 19 reasonably available to you permits. Merely attaching reports or records prepared by  
 20 someone other than you will be non-responsive. If an interrogatory cannot be answered  
 21 completely, answer it to the extent possible.

22 5. Whenever an interrogatory may be answered by referring to any material  
 23 or any document, the material or document may be attached as an exhibit to the  
 24 response and referred to in the response. If the material or document has more than one  
 25 page, refer to the page and section where the answer to the interrogatory can be found.

26 6. In answering these interrogatories, you must make a diligent search of  
 27 your records in your possession, as well as materials which are subject to your control  
 28 even though in the control of other persons. If you cannot obtain information or records

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1 in time to answer these interrogatories, you must explain the circumstances concerning  
 2 your inability to obtain such information and what is being done to obtain such  
 3 information.

4 7. A request for the listing of materials or documents shall be deemed  
 5 without further specification to include a request for the following information for each  
 6 item:

- 7 (a) the nature of the materials or documents;
- 8 (b) the date, if any, which the materials or documents bear;
- 9 (c) the person or persons executing the materials or documents;
- 10 (d) the person, if any, to whom the materials or documents are addressed;
- 11 (e) any file number used in connection with the materials or documents;
- 12 (f) the location of the materials or documents;
- 13 (g) the name and last known address of the person or persons having  
 14 possession, custody or control of the materials or documents.

15 (h) If any or all documents identified in your responses are no longer in  
 16 existence or no longer in your possession, custody, or control because of destruction,  
 17 loss, or any other reason, identify each and every such document.

18 8. A request for the name of any person shall be deemed without further  
 19 specification to include a request for that person's last known business and residence  
 20 address.

21 9. **Instruction Regarding Alleged Ambiguity:** To avoid ambiguity,  
 22 significant effort has been spent to define a number of terms used in the following  
 23 discovery requests. If you or your attorney claim you do not understand the  
 24 meaning of a term, please refer to the list of definitions or contact the opposing  
 25 attorney for clarification, preferably before responses are due so that the alleged  
 26 ambiguous term can be clarified.

27 ///

28 ///

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1           10. The following terms used in these instructions and interrogatories are  
 2 defined as follows (and are to be construed as broadly as possible to include the most  
 3 information responsive to the discovery requests propounded herein):

4           (a) **“DEFENDANTS”** means CITY OF CARSON and CITY OF CARSON  
 5 MOBILEHOME PARK RENTAL REVIEW BOARD.

6           (b) **“IDENTIFY”** shall mean and refer to describing with sufficient  
 7 particularity so as to permit propounding party to properly articulate a demand for  
 8 inspection or subpoena.

9           (c) **“DOCUMENT”** means a writing, as defined in *Federal Rules of*  
 10 *Evidence*, Rule 1001, and includes the original or a copy of any handwriting,  
 11 typewriting, printing, transcription, photostating, photographing, magnetic impulse,  
 12 mechanical or electronic recording, and every other means of recording upon any  
 13 tangible thing and form of communicating or representation, including letters, words,  
 14 pictures, tapes, sounds or symbols, or combinations of them. Additionally, it is a term  
 15 used in its broadest sense and includes, but is not limited to, the original and all non-  
 16 identical copies, whether different from the original by reason of notations made on  
 17 such copies or otherwise, and all drafts of: computer data, letters, telegrams,  
 18 memorandum, reports of telephone conversations, ledgers, journals, invoices, bills,  
 19 sales orders, call reports, financial and business records, receipts, contracts, reports,  
 20 studies, calendar entries, diary entries, maps, pamphlets, notes, charts, forms,  
 21 tabulations, analyses, statistical or informational accumulations, summaries or  
 22 abstracts, any kind of records of meetings or conversations, firm impressions, sound or  
 23 mechanical reproductions, rules, regulations, opinions, orders, interpretations,  
 24 exceptions, position papers, guidelines, publications, instructions, transparencies,  
 25 handbooks, manuals, operating procedures, appointment calendars, call slips, file  
 26 jackets, course materials, training materials, minutes, testimony, press releases,  
 27 speeches, surveys, graphs, statistics, tables, printed or typewritten forms (whether of  
 28 visits, telephone calls, or otherwise) indices, agreements, graphic representations,



1 canceled checks, correspondence, memos, telephone message slips, sketches, notes of  
2 conversations, and all other written, printed, typed or other reported matter (including  
3 electronic or magnetic recordings), photographs, e-mails or other data compilations in  
4 which information can be obtained, which are in the possession, custody, or control of  
5 plaintiffs, plaintiff's attorneys, agents, physicians, directors, officers, partners, affiliates,  
6 subsidiaries, servants, or employees.

7 (d) The "**COMPLAINT**" shall mean Plaintiff COLONY COVE  
8 PROPERTIES, LLC's First Amended Complaint, filed on or about April 16, 2015 in  
9 the above-captioned action.

10 (e) "**YOU**" and "**YOUR**" shall refer to Plaintiff COLONY COVE  
11 PROPERTIES, LLC. and YOUR agents, associates, employees, insurance companies,  
12 their agents, their employees, YOUR attorneys, accountants, investigators, lenders,  
13 investment advisors, and anyone else acting on YOUR behalf.

14 (f) "**THE PARK**" shall mean Plaintiff's mobilehome park Colony Cove  
15 Mobile Estates, located at 17700 S. Avalon Blvd., Carson, California 90746, which is  
16 the subject of the above-captioned action.

17 (g) "**MEMBERS**" shall mean the members, owners, managing agent(s), or  
18 agent(s) of Plaintiff, COLONY COVE PROPERTIES, LLC, a limited liability  
19 company.

20 (h) "**YOUR AFFILIATES**" shall mean James F. Goldstein as an individual  
21 or any entity which James F. Goldstein owns in whole or in part.

22 (i) The "**BOARD**" shall mean Defendant CITY OF CARSON  
23 MOBILEHOME PARK RENTAL REVIEW BOARD.

24 (j) "**AND**" and "**OR**" shall mean And/Or.

25 (k) "**PERSON**" means not only natural persons, but also firms, businesses, trusts,  
26 corporations, partnerships, organizations, associations, industry groups, entities, joint  
27 venturers, corporations, or any government or governmental entity, commission or  
28 agency and any divisions or departments or other units of any of the entities defined



1 herein.

2 11. **This discovery request is continuing.** You are reminded that, in  
3 answering these interrogatories, you have a continuing duty to update your responses in  
4 the event you learn or obtain subsequent information that would affect your answers at  
5 the time made. In the event that any such information comes to your attention,  
6 possession, custody or control or the attention, possession, custody or control of your  
7 associates or your attorneys subsequent to the submission of your response, when the  
8 information is responsive to any interrogatory in this set, you are required to furnish  
9 said additional information to the opposing attorney immediately.

10

11

**SPECIAL INTERROGATORIES**

12

13 **SPECIAL INTERROGATORY NO. 1:**

14 Please IDENTIFY each of YOUR MEMBERS (including residence address,  
15 residence telephone number, business address, and business telephone number) who  
16 were MEMBERS prior to April 4, 2006.

17 **SPECIAL INTERROGATORY NO. 2:**

18 Please state, in as great of detail as YOU are able, all facts that describe the  
19 relationship between YOU and James F. Goldstein at all times before, during, and after  
20 YOU purchased THE PARK.

21 **SPECIAL INTERROGATORY NO. 3:**

22 Please state the names, addresses, and current owners of all mobilehome parks  
23 which were owned by YOU or any of YOUR AFFILIATES in a jurisdiction with  
24 mobilehome space rent control at any time before April 4, 2006.

25 **SPECIAL INTERROGATORY NO. 4:**

26 For each mobilehome park that YOU identified in Special Interrogatory No. 3,  
27 please identify which of those parks were acquired in whole or in part through debt  
28 financing.

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1 **SPECIAL INTERROGATORY NO. 5:**

2 For each mobilehome park that YOU identified in Special Interrogatory No. 4,  
3 please state the name and address for each park where YOU or YOUR AFFILIATES  
4 were permitted to include the debt service on such park in calculating a rent increase.

5 **SPECIAL INTERROGATORY NO. 6:**

6 Please state the name and address of each mobilehome park owned by YOU or  
7 YOUR AFFILIATES for which an application to subdivide or convert to another land  
8 use or to a condominium was submitted at any time, whether before, during, or after  
9 YOU acquired THE PARK.

10 **SPECIAL INTERROGATORY NO. 7:**

11 For each of the mobilehome parks owned by YOU or YOUR AFFILIATES,  
12 please state the name and address of each mobilehome park owned by YOU or YOUR  
13 AFFILIATES for which an application to subdivide or convert to another land use or a  
14 condominium has been granted at any time before, during, or after YOU acquired THE  
15 PARK.

16 **SPECIAL INTERROGATORY NO. 8:**

17 Please IDENTIFY each PERSON (including residence address, residence  
18 telephone number, business address, business telephone number, AND relationship to  
19 YOU of that individual) who YOU consulted with in deciding to submit YOUR  
20 application to subdivide THE PARK including ,but not limited to, real estate agents,  
21 investment advisors, and attorneys.

22 **SPECIAL INTERROGATORY NO. 9:**

23 Please IDENTIFY each PERSON (including residence address, residence  
24 telephone number, business address, business telephone number, AND relationship to  
25 YOU of that individual) who YOU consulted with in deciding to acquire THE PARK,  
26 including but not limited to real estate agents, investment advisors, and attorneys.

27 ///

28 ///





1 **SPECIAL INTERROGATORY NO. 10:**

2 Please IDENTIFY each mobilehome park owner in Carson that YOU  
3 communicated with about debt service being included in the BOARD's rent increase  
4 decisions before YOU acquired THE PARK. (For the purposes of this Special  
5 Interrogatory, "owners" includes the managers, agents, associates, employees,  
6 insurance companies, their agents, their employees, attorneys, accountants,  
7 investigators, lenders, investment advisors, and anyone else acting on the owner's  
8 behalf.)

9 **SPECIAL INTERROGATORY NO. 11:**

10 Please IDENTIFY each PERSON (including residence address, residence  
11 telephone number, business address, business telephone number, AND relationship to  
12 YOU of that individual) who YOU spoke with about DEFENDANTS' mobilehome  
13 space rent control ordinance, policies and practices before YOU acquired THE PARK.

14 **SPECIAL INTERROGATORY NO. 12:**

15 Prior to acquiring THE PARK, please state the amount of pretax profit (i.e.  
16 amount earned less amount spent before taxes) YOU expected to make from THE  
17 PARK in each calendar year between 2006 and 2010.

18 **SPECIAL INTERROGATORY NO. 13:**

19 Please IDENTIFY each PERSON (including residence address, residence  
20 telephone number, business address, business telephone number, AND relationship to  
21 YOU of that individual) YOU consulted with in determining the "profit," identified in  
22 Paragraph 4 of the COMPLAINT, that YOU expected when YOU purchased THE  
23 PARK.

24 **SPECIAL INTERROGATORY NO. 14:**

25 Please state, in as much detail as YOU are able, all facts that support your  
26 allegation in Paragraph 17 of the COMPLAINT that, "prior to Colony Cove's  
27 acquisition of the Park, the City always (or virtually always) considered a park owner's  
28 debt service when disposing of fair return rent applications."

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ATTORNEYS AT LAW



1 **SPECIAL INTERROGATORY NO. 15:**

2 Please IDENTIFY each PERSON (including residence address, residence  
3 telephone number, business address, business telephone number, AND relationship to  
4 YOU of that individual) you spoke to in forming the basis for YOUR allegation in  
5 Paragraph 17 of the COMPLAINT that, "prior to Colony Cove's acquisition of the  
6 Park, the City always (or virtually always) considered a park owner's debt service when  
7 disposing of fair return rent applications."

8 **SPECIAL INTERROGATORY NO. 16:**

9 Please IDENTIFY each PERSON (including the residence address, residence  
10 telephone number, business address, business telephone number, AND relationship to  
11 YOU of that individual) YOU consulted with in forming YOUR allegation in  
12 Paragraph 25 of the COMPLAINT that, "a rent increase of approximately \$200 per  
13 space per month is necessary for Colony Cove to earn a fair return on its investment."

14 **SPECIAL INTERROGATORY NO. 17:**

15 Please state, in as much detail as YOU are able, all facts to support your  
16 allegation in Paragraph 63 of the COMPLAINT that the BOARD has prohibited "all  
17 economically beneficial use of the land."

18 **SPECIAL INTERROGATORY NO. 18:**

19 Please state, in as much detail as YOU are able, all facts upon which YOU base  
20 YOUR allegation at paragraph 19 of the COMPLAINT that "the purchase price that  
21 Colony Cove paid represented fair market value of the Park..."

22 **SPECIAL INTERROGATORY NO. 19:**

23 Please state, in as much detail as YOU are able, the actions YOU took, if any, to  
24 determine if any residents of THE PARK could afford any of the rent increases YOU  
25 applied for at THE PARK.

26 ///

27 ///

28 ///

1 DATED: September <sup>1</sup>2, 2015

ALESHIRE & WYNDER, LLP  
SUNNY K. SOLTANI  
JUNE S. AILIN  
STEPHEN R. ONSTOT  
JEFF M. MALAWY  
LARA LEITNER  
MARGARET W. ROSE

By: 

MARGARET W. ROSE  
Attorneys for Defendants CITY OF  
CARSON and CITY OF CARSON  
MOBILEHOME PARK RENTAL  
REVIEW BOARD

ALESHIRE &  
WYNDER<sup>LLP</sup>  
ATTORNEYS AT LAW



**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 2361 Rosecrans Ave., Suite 475, El Segundo, CA 90245.

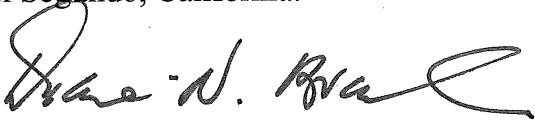
On **September 3, 2015**, I served true copies of the following document(s) described as **CITY OF CARSON'S SPECIAL INTERROGATORIES TO PLAINTIFF, COLONY COVE PROPERTIES, LLC (SET ONE)** on the interested parties in this action as follows:

**SEE ATTACHED SERVICE LIST**

**BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Aleshire & Wynder, LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at El Segundo, California.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on **September 3, 2015**, at El Segundo, California.

  
DIANE N. BRANCHE

ALESHIRE &  
WYNDER  
ATTORNEYS AT LAW



**SERVICE LIST**  
**Colony Cove Properties, LLC v. City of Carson, et al.**  
**Case No. CV14-03242 PSG**

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*Attorneys for Plaintiff*  
*Colony Cove Properties, LLC*

ALSHIRE &  
WYNDER LLP  
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# **EXHIBIT 2**



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7 Attorneys for Defendants  
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8 CARSON MOBILEHOME PARK  
RENTAL REVIEW BOARD

9  
10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

12 COLONY COVE PROPERTIES, LLC  
13 a Delaware limited liability company,

14 Plaintiff,

15 v.

16 CITY OF CARSON, a municipal  
corporation; CITY OF CARSON  
17 MOBILEHOME PARK RENTAL  
REVIEW BOARD, a public  
18 administrative body; and DOES 1 to 10,  
inclusive,

19 Defendants.  
20

Case No. CV14-03242 PSG (PJWx)

Assigned to:  
The Hon. Philip S. Gutierrez

**DEFENDANT CITY OF CARSON'S  
RESPONSES TO PLAINTIFF  
COLONY COVE PROPERTIES,  
LLC'S REQUEST FOR  
PRODUCTION OF DOCUMENTS  
PROPOUNDED ON DEFENDANT  
CITY OF CARSON, SET NO. ONE**

Trial Date: April 5, 2016

22 PROPOUNDING PARTY: PLAINTIFF, COLONY COVE PROPERTIES, LLC

23 RESPONDING PARTY: DEFENDANT, CITY OF CARSON

24 SET NO.: ONE

25 Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Defendant, CITY  
26 OF CARSON ("Responding Party" or "Answering Party"), hereby responds to Plaintiff  
27 COLONY COVE PROPERTIES, LLC's ("Propounding Party" or "Requesting Party")  
28 Request for Production of Documents, Set One as follows:

01007.0504/269843.1

Case No. CV14-03242 PSG (PJWx)

DEFENDANT CITY OF CARSON'S RESPONSES TO PLAINTIFF COLONY COVE PROPERTIES, LLC'S  
REQUEST FOR PRODUCTION OF DOCUMENTS, SET NO. ONE



1                   **PRELIMINARY STATEMENT AND GENERAL OBJECTIONS**

2                   These responses are made solely for the purpose of, and in relation to, this action.  
3                   Each response is given subject to all appropriate objections including, but not limited  
4                   to, objections concerning competency, relevancy, materiality, propriety and  
5                   admissibility, which would require the exclusion of any statement contained herein  
6                   where made by a witness present and testifying in court. All such objections and  
7                   grounds therefore are reserved, and may be interposed at the time of trial.

8                   It should be noted that this Responding Party has not fully completed its  
9                   investigation of the facts relating to this case and has not completed its preparation for  
10                  trial. Investigation and discovery by the Responding Party are continuing and are not  
11                  complete. As discovery proceeds, witnesses, facts and evidence may be discovered  
12                  which are not set forth herein, but which may have been responsive to a request for  
13                  production. Facts and evidence now known may be imperfectly understood or the  
14                  relevance or consequences of such facts and evidence may be imperfectly understood,  
15                  and, accordingly, such facts and evidence may, in good faith, not be included in the  
16                  following responses. All of the responses contained herein are based only upon such  
17                  information and documents which are presently available to and specifically known to  
18                  this Responding Party and disclose only those contentions which presently occur to  
19                  such Responding Party. It is anticipated that further discovery, independent  
20                  investigation, legal research and analysis may supply additional facts, add meaning to  
21                  the known facts, as well as establish entirely new factual conclusions and legal  
22                  contentions, all of which may lead to substantial additions to, changes in, and variations  
23                  from the contentions set forth herein.

24                  The following responses are given without prejudice to Responding Party's right  
25                  to produce evidence of any subsequently discovered facts which this Responding Party  
26                  may later recall. Responding Party accordingly reserves the right to change any and all  
27                  responses herein as additional facts are ascertained, analyses are made, legal research is  
28                  completed, and contentions are made.

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Case No. CV14-03242 PSG (PJWx)

DEFENDANT CITY OF CARSON'S RESPONSES TO PLAINTIFF COLONY COVE PROPERTIES, LLC'S  
REQUEST FOR PRODUCTION OF DOCUMENTS , SET NO. ONE





1 This preliminary response is incorporated into each and every response herein by  
2 this reference.

3 Responding Party incorporates all of these objections (the "General Objections")  
4 into each of the responses herein. Subject to and without waiving any of the foregoing,  
5 Responding Party makes the following responses:

6 **RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS**

7 **REQUEST FOR PRODUCTION NO. 1:**

8 All DOCUMENTS that YOU referred to or relied on in Resolution No. 2001-  
9 215, entitled "A Resolution Of The Carson Mobilehome Park Rental Review Board  
10 Granting A Rent Increase For Carson Gardens Trailer Lodge."

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

12 Responding Party objects based on the General Objections above, which are  
13 incorporated by reference as if stated in full herein. In addition, Responding Party  
14 objects to this request to the extent it requests information protected by the attorney-  
15 client, deliberative process, and/or mental processes privileges. See Privilege Log  
16 attached as "Exhibit A." Without waiving those objections, or the General Objections  
17 above, Responding Party responds that it will produce documents in its possession,  
18 custody, and control responsive to this request.

19 **REQUEST FOR PRODUCTION NO. 2:**

20 All DOCUMENTS CONCERNING the "33 previous prior applications"  
21 referenced on page 6, line 18 of YOUR Motion to Dismiss First Amended Complaint  
22 Pursuant To F.R.C.P. 12(b)(6), filed in this ACTION on May 6, 2015.

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

24 Responding Party objects based on the General Objections above, which are  
25 incorporated by reference as if stated in full herein. In addition, Responding Party  
26 objects to this request to the extent it requests information protected by the attorney-  
27 client, deliberative process, and/or mental processes privileges. See Privilege Log  
28 attached as "Exhibit A." Without waiving those objections, or the General Objections

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Case No. CV14-03242 PSG (PJWx)

DEFENDANT CITY OF CARSON'S RESPONSES TO PLAINTIFF COLONY COVE PROPERTIES, LLC'S  
REQUEST FOR PRODUCTION OF DOCUMENTS, SET NO. ONE



1 above, Responding Party responds that it will produce documents in its possession,  
2 custody, and control responsive to this request.

3 **REQUEST FOR PRODUCTION NO. 3:**

4 All DOCUMENTS CONCERNING the written application for a rent increase  
5 submitted to the City of Carson Mobilehome Park Rental Review Board by Carson  
6 Gardens, LLC on or about October 11, 2000, including all DOCUMENTS related to the  
7 litigation CONCERNING said application.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

9 City objects based on the General Objections above, which are incorporated by  
10 reference as if stated in full herein. In addition, Responding Party objects to this  
11 request to the extent it requests information protected by the attorney-client, attorney  
12 work product, deliberative process, and/or mental processes privileges. See Privilege  
13 Log attached as "Exhibit A." Without waiving those objections, or the General  
14 Objections above, Responding Party responds that it will produce documents in its  
15 possession, custody, and control responsive to this request.

16 **REQUEST FOR PRODUCTION NO. 4:**

17 All DOCUMENTS CONCERNING any rent increase applications submitted  
18 from 1992 through 2007 to YOU pursuant to Section IV of YOUR "Guidelines for  
19 Implementation of the Mobilehome Space Rent Control Ordinance."

20 **RESPONSE TO REQUEST FOR PRODUCTION NO. 4:**

21 City objects based on the General Objections above, which are incorporated by  
22 reference as if stated in full herein. In addition, Responding Party objects that this  
23 request is unduly burdensome because neither Defendant City of Carson nor Defendant  
24 City of Carson Mobilehome Park Rental Review Board ("Board") tracks which  
25 applications are Section IV rent increase applications and which are General rent  
26 increase applications. Moreover, neither the rent increase applications themselves nor  
27 the Board's resolutions pertaining thereto clearly reflect the nature of a particular rent  
28 increase application. However, Responding Party has conducted a diligent search in a

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Case No. CV14-03242 PSG (PJWx)

DEFENDANT CITY OF CARSON'S RESPONSES TO PLAINTIFF COLONY COVE PROPERTIES, LLC'S  
REQUEST FOR PRODUCTION OF DOCUMENTS, SET NO. ONE





1 good faith effort to respond and believes it has identified the responsive applications.  
2 This request is also objectionable to the extent it requests information protected by the  
3 attorney-client, deliberative process, and/or mental processes privileges. See Privilege  
4 Log attached as “Exhibit A.” Without waiving those objections, or the General  
5 Objections above, Responding Party will produce all responsive non-privileged  
6 documents in its possession, custody, and control where the Board’s resolutions  
7 indicated in some way that the application under consideration may have been  
8 submitted pursuant to Section IV of the Board’s “Guidelines for Implementation of the  
9 Mobilehome Space Rent Control Ordinance.”

10 **REQUEST FOR PRODUCTION NO. 5:**

11 All DOCUMENTS CONCERNING rent increase applications in which an  
12 increase was granted, at least in part, due to increased debt-service expense and which  
13 were submitted within three years of a change in ownership of the mobilehome park.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 5:**

15 City objects based on the General Objections above, which are incorporated by  
16 reference as if stated in full herein. In addition, Responding Party objects that this  
17 request is unduly burdensome due to the extreme difficulty of locating the information  
18 requested therein. The City of Carson Mobilehome Park Rental Review Board’s  
19 (“Board”) resolutions pertaining to a specific application do not always clearly reflect  
20 whether the Board granted a rent increase, at least in part, due to increased debt-service.  
21 However, Responding Party has conducted a diligent search in a good faith effort to  
22 respond and believes it has identified the responsive applications. This request is also  
23 objectionable to the extent it requests information protected by the attorney-client,  
24 deliberative process, and/or mental processes privileges. See Privilege Log attached as  
25 “Exhibit A.” Without waiving those objections, or the General Objections above,  
26 Responding Party will produce all responsive non-privileged documents in its  
27 possession, custody, and control where the application was submitted within three years  
28 of a change in ownership of the mobilehome park and the Board’s resolutions indicated

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Case No. CV14-03242 PSG (PJWx)

DEFENDANT CITY OF CARSON’S RESPONSES TO PLAINTIFF COLONY COVE PROPERTIES, LLC’S  
REQUEST FOR PRODUCTION OF DOCUMENTS , SET NO. ONE



1 in some way that the requested rent increase may have been granted, at least in part, due  
2 to increased debt-service expense.

3 **REQUEST FOR PRODUCTION NO. 6:**

4 All DOCUMENTS not already produced to COLONY COVE CONCERNING  
5 the reports and testimony of Kenneth Baar in connection with COLONY COVE'S Year  
6 One and Year Two applications, including any COMMUNICATION between Kenneth  
7 Baar and YOU, and his conclusion that debt service should not be considered as a  
8 factor in rent increase applications.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 6:**

10 City objects based on the General Objections above, which are incorporated by  
11 reference as if stated in full herein. The City also objects that this request is vague and  
12 ambiguous as to the terms "reports and testimony," which are utilized in this request  
13 without providing any definition to Responding Party. This request is also  
14 objectionable to the extent it requests information protected by the attorney client,  
15 deliberative process, and/or mental processes privileges. See Privilege Log attached as  
16 "Exhibit A." Without waiving those objections, or the General Objections above,  
17 Responding Party responds that it will produce documents in its possession, custody,  
18 and control responsive to this request.

19 **REQUEST FOR PRODUCTION NO. 7:**

20 All DOCUMENTS not already produced to COLONY COVE CONCERNING  
21 the reports and testimony of James Brabant in connection with COLONY COVE'S  
22 Year One and Year Two applications, including any COMMUNICATION between  
23 James Brabant and YOU, and his conclusion that debt service should not be considered  
24 as a factor in rent increase applications.

25 **RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**

26 City objects based on the General Objections above, which are incorporated by  
27 reference as if stated in full herein. The City also objects that this request is vague and  
28 ambiguous as to the terms "reports and testimony," which are utilized in this request

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Case No. CV14-03242 PSG (PJWx)

DEFENDANT CITY OF CARSON'S RESPONSES TO PLAINTIFF COLONY COVE PROPERTIES, LLC'S  
REQUEST FOR PRODUCTION OF DOCUMENTS, SET NO. ONE

1 without providing any definition to Responding Party. This request is also  
2 objectionable to the extent it requests information protected by the attorney client,  
3 deliberative process, and/or mental processes privileges. See Privilege Log attached as  
4 "Exhibit A." Without waiving those objections, or the General Objections above,  
5 Responding Party responds that it will produce documents in its possession, custody,  
6 and control responsive to this request.

7  
8 DATED: October 26, 2015

ALESHIRE & WYNDER, LLP  
SUNNY K. SOLTANI  
JUNE S. AILIN  
STEPHEN R. ONSTOT  
JEFF M. MALAWY

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14 By: 

15 JEFF M. MALAWY  
16 Attorneys for Defendants CITY OF  
17 CARSON and CITY OF CARSON  
18 MOBILEHOME PARK RENTAL  
19 REVIEW BOARD  
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# **EXHIBIT A**



**Colony Cove Properties, LLC v. City of Carson, et al.**

**USDC CASE NO. CV-14-03242**

**PRIVILEGE LOG FOR DOCUMENTS RELATING TO PLAINTIFF'S RFP NO. ONE TO CITY OF CARSON**

DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
5/8/08	William Wynder	Sunny Soltani, Anthony R. Taylor, Ken Farsing, Ken Baar	Email chain re: Colony Cove Fair Return Application	Deliberative Process Privilege; Mental Process Privilege; Attorney Client Privilege; Attorney Work Product; Mental Processes Privilege
5/15/02	Rochelle Browne	Keith Bennett	Email regarding complaint by resident at Park Avalon Estates regarding mobilehome residency law (MRL)	Attorney Client Privilege
9/24/02	Keith Bennett	Rochelle Browne	Email regarding Imperial Carson staff report	Attorney Client Privilege; Deliberative Process Privilege; Mental Process Privilege;
9/12/02	Keith Bennett	Rochelle Browne	Expenditures for Imperial Carson	Attorney Client Privilege; Deliberative Process Privilege; Mental Process Privilege
6/1/09	Ken Baar	William Wynder & Ken Freschauf	Email and Colony Cove draft report	Deliberative Process Privilege; Mental Process Privilege; Attorney Client Privilege

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DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
5/21/09	Ken Baar	Ken Freschauf	Email regarding calculations	Deliberative Process Privilege; Mental Process Privilege
7/8/09	Ken Baar	Ken Freschauf & William Wynder	Email regarding Colony Cove Fair Return MRRB Resolution	Deliberative Process Privilege; Mental Process Privilege; Attorney Client Privilege
7/8/09	William Wynder	Ken Freschauf & Ken Baar	Email regarding Colony Cove Fair Return MRRB Resolution	Deliberative Process Privilege; Mental Process Privilege; Attorney Client Privilege
7/8/09	William Wynder	Ken Freschauf & Ken Baar	Email regarding Colony Cove Fair Return MRRB Resolution	Deliberative Process Privilege; Mental Process Privilege; Attorney Client Privilege
5/26/09	Ken Baar	Ken Freschauf	Email regarding MNOI & GPM Calcs	Deliberative Process Privilege; Mental Process Privilege
5/26/09	Ken Baar	Ken Freschauf	Email regarding MNOI & GPM Calcs	Deliberative Process Privilege; Mental Process Privilege
5/27/09	Ken Baar	Ken Freschauf	Email regarding KF draft SR-CC-2007-08	Deliberative Process Privilege; Mental Process Privilege
5/24/09	Ken Baar	Ken Freschauf	Email regarding draft Colony Cover Staff Report	Deliberative Process Privilege; Mental Process Privilege
5/27/09	Ken Baar	Ken Freschauf	Email regarding MNOI	Deliberative Process Privilege; Mental Process Privilege

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DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
7/8/09	Ken Freschauf	William Wynder	Email regarding Colony Cover Return MRRB Resolution	Attorney Client Privilege
5/11/09	Ken Freschauf	Ken Baar & William Wynder	Email regarding Colony Cove Revised Calcs	Attorney Client Privilege; Deliberative Process Privilege; Mental Process Privilege
5/20/09	Ken Freschauf	Ken Baar & William Wynder	Email regarding Colony Cove Spreadsheets	Attorney Client Privilege; Deliberative Process Privilege; Mental Process Privilege
5/20/09	Ken Freschauf	Ken Baar & William Wynder	Email regarding Expense Corrections/Increase Comparisons	Attorney Client Privilege; Deliberative Process Privilege; Mental Process Privilege
5/28/09	Ken Freschauf	William Wynder	Email regarding Final Draft of the Colony Cove Staff Report	Attorney Client Privilege
5/13/09	Ken Freschauf	William Wynder	Email regarding minor corrections to Colony Cover O&M sheet	Attorney Client Privilege; Deliberative Process Privilege; Mental Process Privilege
5/28/09	Ken Freschauf	William Wynder	Email regarding CC-SR-2007-08	Attorney Client Privilege
5/28/09	Ken Freschauf	William Wynder	Email regarding Final Draft of the Colony Cove Staff Report	Attorney Client Privilege

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DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
5/26/09	Ken Freschauf	Ken Baar	Email regarding CC-MNOI-2 & CC-GPM-2	Deliberative Process Privilege; Mental Process Privilege
12/15/09	Ken Freschauf	Sunny Soltani	Email regarding draft of commentary re legal Colony Cover legal fees	Attorney Client Privilege; Deliberative Process Privilege; Mental Process Privilege
5/28/09	Ken Freschauf	Ken Baar	Email regarding GPM Calc.	Deliberative Process Privilege; Mental Process Privilege
5/20/09	Ken Freschauf	Ken Baar	Email regarding CC-MNOI-2	Deliberative Process Privilege; Mental Process Privilege
5/26/09	Ken Freschauf	Ken Baar	Email regarding MNOI & GPM Calcs	Deliberative Process Privilege; Mental Process Privilege
5/27/09	Ken Freschauf	Ken Baar	Email regarding MNOI Do-Over	Deliberative Process Privilege; Mental Process Privilege
5/26/09	Ken Freschauf	Ken Baar	Email regarding Draft Colony Cove Staff Report	Deliberative Process Privilege; Mental Process Privilege
5/26/09	Ken Freschauf	Ken Baar	Email regarding MNOI & GPM Calcs	Deliberative Process Privilege; Mental Process Privilege
5/26/09	Ken Freschauf	Ken Baar	Email regarding MNOI & GPM Calcs	Deliberative Process Privilege; Mental Process Privilege
5/27/09	Ken Freschauf	Ken Baar	Email regarding MNOI Do-Over	Deliberative Process Privilege; Mental Process Privilege

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DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
1/9/08			Staff Report to Mobilehome Park Rental Review Board	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
8/5/09			Mobilehome Park Rental Review Board Staff Report Carson Gardens Trailer Lodge	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
8/27/07	Mark Alpert	Anthony Taylor	Email regarding 36690.005 Community Asset Mgmt/Carson Gardens/Suppl. Writ/Case # BS072845	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
1/29/07	Sandy Moore, Anthony Taylor, Kenneth Freschauf	Sandy Moore, Anthony Taylor, Kenneth Freschauf	Email chain regarding 36690.005 Community Asset Mgmt/Carson Gardens/Suppl. Writ/Case # BS072845	Attorney-Client Privilege
11/28/06			Interoffice Memorandum regarding Public Records Request	Attorney-Client Privilege
12/1/06	Janet Byrne, Senior Clerk	Mark Alpert	Letter regarding Public Records Request	Attorney-Client Privilege; Deliberative Process Privilege; Mental Process Privilege

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DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
11/6/06	Ken Freschauf	William Wynder	Carson Gardens Memorandum regarding general rent increase and ruling from the superior court	Attorney-Client Privilege; Deliberative Process Privilege; Mental Process Privilege
11/15/06	William Wynder	Ken Freschauf	Email regarding Ruling on Carson Gardens Motion Requiring any Further rent increase	Attorney-Client Privilege; Deliberative Process Privilege; Mental Process Privilege
9/21/06	William Wynder	Ken Freschauf, Ken Barr, Anthony Taylor	Email regarding and Motion to Further Enforce Judgment	Attorney-Client Privilege
8/9/06	Anthony Taylor	William Wynder	Email regarding and Motion to Carson Gardens Objections to Writ Return	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
6/20/06	William Wynder	Anthony Taylor, Ken Freschauf, Mark Alpert	Email chain regarding 36690.005 Community Asset Mgmt/Carson Gardens/Suppl. Writ/Case # BS072845 & Analysis of Carson Gardens Rent Increase Petition	Attorney-Client Privilege; Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
8/22/01			Draft Staff Report to Mobilehome Park Rental Review Board	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege

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DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
5/18/06	Anthony Taylor	Ken Baar	Fax & Analyzation of the Carson Garden's rent increase application	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
5/12/06	Anthony Taylor	Ken Baar, Ken Freschauf	Email regarding and transcript of hearing on Carson Gardens' Motion for Remand Order	Attorney-Client Privilege
6/23/06	William Wynder	Robert Coldren, Ken Freschauf	Email chain regarding 36690.005 Community Asset Mgmt/Carson Gardens/Suppl. Writ/Case # BS072845	Attorney-Client Privilege
6/24/09	Ken Freschauf	Anthony Taylor	Fax re: Mark Alpert's letter to Ken Freschauf regarding Carson Gardens Trailer Park Rent Increase Applicaiton	Attorney-Client Privilege
7/8/09	Ken Freschauf	Anthony Taylor, William Wynder	Email regarding Carson Gardens (2007-2008 expense years)	Attorney-Client Privilege
2/26/09	Anthony Taylor	William Wynder	Email regarding Notice of Entry of Judgment	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege

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DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
1/22/09	Ken Freschauf	Anthony Taylor	Fax regarding Application for Rent Increase for Carson Gardens	Attorney-Client Privilege
11/14/08	Mark Alpert	Anthony Taylor	Email regarding 3690.015 Carson Gardens/Writ, includes attorney's notes	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
5/3/06	William Wynder	Anthony Taylor, Ken Baar, Ken Freschauf	Email regarding Carson Gardens – Remand Order	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
5/3/06	Anthony Taylor	William Wynder, Ken Baar, Ken Freschauf	Email regarding Carson Gardens – Remand Order	Attorney-Client Privilege; Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
4/28/06	Jerry Groomes	William Wynder	Payment for reimbursement costs	Attorney-Client Privilege
4/12/06	Ken Baar	Anthony Taylor	Letter regarding transcripts from 8/11/04 meeting of Mobile home Rental Review Board	Attorney-Client Privilege
3/16/06	William Wynder	Ken Freschauf, Ken Baar	Fax regarding Rental Review Board	Attorney-Client Privilege
3/16/06	William Wynder	Anthony Taylor	Email regarding Carson Gardens	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege

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DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
1/29/06	Anthony Taylor	William Wynder	Email regarding Carson Garden Appeal	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
1/18/06	William Wynder	Stuart, Ken Freschauf	Email regarding Carson Gardens Court of Appeal Opinion	Attorney-Client Privilege
1/23/06	William Wynder	Jerome Groomes, Ken Freschauf	Email regarding Letter to attorneys to distribute to Council	Attorney-Client Privilege
8/25/05	Ken Freschauf	William Wynder	Transmittal of Administrative Record Volumes 1-10	Attorney-Client Privilege; Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
3/8/05	William Wynder	Ken Freschauf	Fax regarding authorities for HR&C letter	Attorney-Client Privilege; Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
6/13/05	Anthony Taylor	William Wynder	Email regarding residents need for letter of denial	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
5/26/06	Anthony Taylor	William Wynder	Email regarding Carson Garden's Ex Parte	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege

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DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
3/8/05	William Wynder	Ken Freschauf	Order on Petitioner's Motion for Attorney's Fees; Notice of Entry of Order	Attorney-Client Privilege
3/3/05	William Wynder	Ken Freschauf	Notice & Motion to Dismiss Appeal and Supportive documents	Attorney-Client Privilege
2/25/05			Tentative Decision notes	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
1/27/05	William Wynder	Ken Freschauf	Letter regarding Petitioner's Motion for Attorneys' Fees and Costs	Attorney-Client Privilege
2/16/05	William Wynder	Ken Freschauf	Fax regarding Opposition to Carson Gardens' Motion for Attorneys' Fees and costs and reply brief	Attorney-Client Privilege
2/16/05		William Wynder	Fax regarding reply brief and scheduling of Motion for Writ	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
2/4/05	William Wynder	Ken Freschauf	Fax regarding missing pages of Ex. E of Petition's Motion for Attorneys' Fees and Costs	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege

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DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
1/3/05		Sunny Soltani, William Wynder	Email regarding Notices of Appeal	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
12/15/04	William Wynder	Ken Freschauf	Fax regarding file and Court's Minute Order with executed Judgment on Motion for Supplemental Writ	Attorney-Client Privilege
11/8/04	William Wynder	Ken Freschauf, Ken Baar	Fax regarding Reply in Support of Motion for Order Further Enforcing Judgment on Writ of Administrative Mandamus and Peremptory Writ of Mandamus	Attorney-Client Privilege
10/18/04	William Wynder	Ken Freschauf	Email regarding continuance of Petition's Petition for Order to Further Enforce Judgment	Attorney-Client Privilege; Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
10/15/04	William Wynder	Ken Freschauf	Letter regarding hearing transcript and Declaration or Marji Muniverz	Attorney-Client Privilege
10/13/04	City Manager's Office	City Attorney's Office	Fax regarding substitution of Counsel in Carson Gardens vs. State of CA	Attorney-Client Privilege

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DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
10/70/4	Sunny Soltani	Ken Freschauf, Ken Baar	Letter regarding Notice of Petition for Order Further Enforcing Judgment on Writ of Administrative Mandamus and Peremptory Writ of Mandamus	Attorney-Client Privilege
10/7/04	Ken Freschauf	Linda Yarvis	Email regarding confirmation of contact information	Attorney-Client Privilege; Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
10/6/04	Rochelle Brown	William Wynder	Letter regarding Substitution of Attorney	Work Product Privilege
9/1/04	William Wynder	Ken Freschauf	Email regarding final draft of Resolution regarding Rent Increase	Attorney-Client Privilege; Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
8/13/04	William Wynder	Ken Freschauf	Email regarding final draft of Resolution regarding Rent Increase	Attorney-Client Privilege; Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
7/14/04	Ken Freschauf	William Wynder	Report of Heather Xitco	Attorney-Client Privilege; Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
10/2/08	Tiffany Israel	Steven Lantsberger	Housey Escrow Instructions and Natural Hazard Disclosures	Attorney-Client Privilege; Deliberative Process Privilege; Mental Process Privilege Work Product Privilege

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DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
8/22/01			Request for a General Rent Increase, Secretary's Report	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
7/20/04			Internal Memorandum regarding Carson Gardens Rehearing of August 5, 2005	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
7/6/06	Ken Freschauf	Anthony Taylor	Letter regarding rent adjustments	Attorney-Client Privilege; Deliberative; Mental Process Privilege Process Privilege; Work Product Privilege
			Draft Privilege Log regarding Carson Gardens – Public Record Request	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
6/22/06	Anthony Taylor	Belinda Hayes, Ken Freschauf, William Wynder, Helen Kawagoe	Email regarding objections to Public Records Acts request	Attorney-Client Privilege; Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
3/17/05	William Wynder	Ken Freschauf	Email regarding and Brief in Opposition to motion to Dismiss Appeal	Attorney-Client Privilege; Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
1/17/06	William Wynder	Ken Freschauf	Email regarding and Carson Gardens Opinion	Attorney-Client Privilege

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DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
1/23/06	William Wynder	Jerome Groomes, Ken Freschauf	Email regarding Letter to attorneys to distribute to Council	Attorney-Client Privilege
2/27/06	William Wynder	Jerome Groomes, Ken Freschauf	Email regarding and status report regarding remaining 3 litigation cases	Attorney-Client Privilege; Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
1/31/06	William Wynder	Ken Freschauf, Ken Baar, Anthony Taylor	Email regarding Carson Gardens Appeal	Attorney-Client Privilege; Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
3/3/06	William Wynder	Ken Freschauf	Email chain regarding Carson Gardens' letter and re- hearing	Attorney-Client Privilege
4/6/06	Ken Freschauf	William Wynder, Ken Baar, Anthony Taylor	Email regarding and Carson Gardens Staff Report	Attorney-Client Privilege; Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
4/27/06	Anthony Taylor	Ken Freschauf, William Wynder	Email regarding and Carson Gardens' Motion for Report Order and Judgment & Reply Brief	Attorney-Client Privilege
4/27/06	Anthony Taylor	Ken Freschauf, William Wynder	Email regarding and Proposed Remand Order	Attorney-Client Privilege; Deliberative Process Privilege; Mental Process Privilege Work Product Privilege

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DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
5/9/06	Anthony Taylor, Mark Alpert	William Wynder, Ken Freschauf,	Email chain regarding closed session to include pending litigation and coordination of new hearing in front of rent commission	Attorney-Client Privilege; Deliberative Process Privilege; Mental Process Privilege
6/7/06	William Wynder	Ken Freschauf	Email regarding and close session memorandum	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
6/20/06	Ken Freschauf	William Wynder, Anthony Taylor	Email regarding and Mobilehome Park Renal Review Board Staff Report	Attorney-Client Privilege; Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
5/3/06	Anthony Taylor	Ken Baar, Ken Freschauf, William Wynder	Email regarding and Tentative Decision & Final Remand Order	Attorney-Client Privilege; Deliberative Process Privilege; Mental Process Privilege
5/3/06	William Wynder	Anthony Taylor, Ken Baar, Ken Freschauf	Email regarding order of transcript	Attorney-Client Privilege; Deliberative Process Privilege; Mental Process Privilege
5/9/06	Anthony Taylor	Ken Baar, Ken Freschauf, William Wynder	Email regarding Legal Analysis for Carson Gardens' Staff Report	Attorney-Client Privilege; Deliberative Process Privilege; Mental Process Privilege
5/10/06	Ken Freschauf	Anthony Taylor, Ken Baar	Email regarding Legal Analysis for Carson Gardens' Staff Report	Attorney-Client Privilege; Deliberative Process Privilege; Mental Process Privilege

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DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
5/12/06	Anthony Taylor	Ken Baar, Ken Freschauf, William Wynder	Email regarding and transcript pages of hearing on Motion for a Remand Order	Attorney-Client Privilege; Deliberative Process Privilege; Mental Process Privilege
5/23/06	Anthony Taylor	William Wynder, Ken Baar, Ken Freschauf	Email regarding new court opinion	Attorney-Client Privilege; Deliberative Process Privilege; Mental Process Privilege
6/6/06	William Wynder	Ken Freschauf, Ken Baar, William Wynder	Emailed regarding and latest draft of staff report	Attorney-Client Privilege; Deliberative Process Privilege; Mental Process Privilege
1/29/09	Anthony Taylor	William Wynder	Email regarding options for proceeding after Court of Appeal Decision	Attorney-Client Privilege; Deliberative Process Privilege; Mental Process Privilege
			Attorney's Notes and Case Law Research	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
9/15/03	Sunny Soltani	Rochelle Brown	Email chain regarding litigation files to be forwarded for review prior to re-hearing	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege

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DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
9/4/03	Rochelle Brown	Ron Winkler	Letter regarding rehearing on the Application of Cason Garden Mobilehome Park and enclosed Analysis of Carson Gardens Rent Increase Application	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
9/19/06			Stipulation & [Proposed] Order regarding Exceeding Page Limitations for Petitioner's Motion	Work Product Privilege
9/19/06			Petitioner's Notice of Motion and Motion for Order Further Enforcing Judgment on Writ of Administrative Mandamus and Peremptory Writ of Mandamus Issued April 16, 2003; Memorandum of Points and Authorities and Declaration of Mark D. Alpert in Support Thereof	Work Product Privilege
9/19/06			Request to Take Judicial Notice in Support of Petitioner's Motion for Further Enforcing Judgment, et al.	Work Product Privilege

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DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
9/19/06			Notice of Re-Lodging Administrative Record in Support of Motion for Order Further Enforcing Judgment, et al.	Work Product Privilege
10/16/06			Opposition Brief by Respondent to Petitioner's Notice of Motion and Motion to for Order Further Enforcing Judgment on Writ of Administrative Mandamus Issued April 16, 2003	Work Product Privilege
10/16/006			Declaration of William W. Wynder in Support of Opposition Brief by Respondent	Work Product Privilege
10/20/06			Petitioner's Reply Brief in Support of Motion for Order Further Enforcing Judgment on Writ of Administrative Mandamus and Peremptory Writ of Mandamus Issued April 16, 2003	Work Product Privilege
			Case Law Research	Work Product Privilege

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DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
5/25/88			Handwritten notes/minutes of MRRB Meeting	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
			Handwritten notes regarding percent CPI and approval	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
			Handwritten notes regarding funding situation	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
5/25/88			Staff Report to Mobilehome Park Rental Review Board with handwritten notes regarding Capital Improvement Rent Increase	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
5/25/88			Staff Report to Mobilehome Park Rental Review Board with handwritten notes regarding General Rent Increase	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege

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DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
5/11/88			Staff Report to Mobilehome Park Rental Review Board with handwritten notes regarding Capital Improvement Rent Increase	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
4/8/88	Gary Nehrenberg	Timothy O'Rourke	Internal Memorandum regarding Landfill Gas Collection System	Attorney Client Privilege
5/11/88			Staff Report to Mobilehome Park Rental Review Board with handwritten notes regarding General Rent Increase	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
5/11/88			Agenda to Mobilehome Park Rental Review Board Meeting with handwritten notes	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
5/11/88			Staff Report to Mobilehome Park Rental Review Board with handwritten notes regarding Capital Improvement Rent Increase	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege

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DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
2/2/88	Rochelle Brown	Timothy O'Rourke	Letter regarding Imperial Carson Mobilehome Park Rent Increase Application	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
			Handwritten notes of mobile home park residents	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
			Notice of Public Hearing Application for a Capital Improvement Rent Increase with handwritten notes	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
3/9/87			Miscellaneous residents' handwritten notes regarding meeting at City Attorney's Office	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
			Handwritten Calculations for base rent and increase percentage	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
3/29/88	Michele Beal Bagneris	Harry Foisia	<i>People v. Anton Berkovich</i> Imperial Carson Mobilehome Estates	Attorney Client Privilege
3/30/88	Joe Bedina	Richard Gunnarson	<i>People v. Anton Berkovich</i> Imperial Carson Mobilehome Estates	Attorney Client Privilege

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DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
3/29/88	Michele Beal Bagneris	Harry Foisia	<i>People v. Anton Berkovich</i> Imperial Carson Mobilehome Estates with legal opinions	Attorney Client Privilege
			Handwritten notes regarding legal opinions from City Attorney's Office	Attorney Client Privilege
2/25/87			Handwritten Draft of Staff Report to Mobilehome Park Rental Review Board with handwritten notes regarding Capital Improvement Rent Increase	Attorney Client Privilege
3/23/87			Draft Staff Report and Application Material	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
3/14/90			Draft Staff Report to The Mobilehome Park Rent Review Board with handwritten notes	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
			Operating Expenses & Income of 1989	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege

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DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
			Handwritten notes regarding staff's review of residents' letters for accuracy	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
			Handwritten notes from 8/14/91 meeting	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
			Handwritten notes regarding calculations of rents for units in various years from 1979-1988	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
			Handwritten notes regarding calculations of general counsel	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
			Handwritten notes from 1990 regarding rent, utilities and property maintenance fees	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
			Handwritten notes from 1988 & 1989 regarding rent, utilities and property maintenance fees	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
			Operating Income & Expenses – per 1991	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege

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DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
			Handwritten Notes of meeting and residents' comments	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
			1989 Operating Expenses with handwritten notes	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
			Handwritten notes regarding late charge income, factors, etc.	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
			Handwritten notes regarding property maintenance/amenities costs	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
			Handwritten notes regarding postages costs	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
			Handwritten notes regarding parking costs	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
8/24/88			Handwritten notes regarding residents' comments regarding rent increase	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege

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DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
			Handwritten calculations regarding fees, CPI, taxes and comparable rents	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
			Handwritten notes with phone messages, meetings and calculations	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
			1987 Operating Expenses & Income	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
11/25/87			Handwritten notes regarding staff report	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
11/25/87			Staff Report to Mobilehome Park Rental Review Board regarding general rent increase with handwritten notes	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
11/25/87			Rental Review Board Staff Report Addendum with notes	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
11/20/87			Handwritten Calculations regarding bringing El Rancho up to Dominguez rents	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege

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DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
10/22/87			Handwritten comparisons regarding park and units	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
4/18/84	Alberta Caldwell		Owners Reasons for Rent Increase & Figures	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
			Handwritten notes regarding payroll, management and deb service	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
			Analysis of Carson Gardens Rent Increase Petition	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
5/9/06	Ken Freschauf	Ken Baar, Anthony Taylor, William Wynder	Email regarding Carson Gardens Calcs.	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
5/23/06	Ken Baar	Ken Freschauf, Anthony Taylor	Email regarding drafts of Carson Gardens report	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
			Carson Gardens Calculations	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege

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DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
			Summary Comparison Chart of Rent Increase Proposals for Carson Gardens Trailer Lodge – (1999 Expense Year)	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
9/19/08	Anthony Taylor	Ken Baar	Email regarding submission of final versions of resolution and acknowledgement of receipt of same	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
5/18/06	Anthony Taylor	Ken Baar	Email chain regarding suggested revisions to resolution	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
4/10/06	Ken Baar	William Wynder, Ken Freschauf, Anthony Taylor	Email regarding staff report review	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
6/28/06	Ken Baar, William Wynder, Anthony Taylor, Ken Freschauf	William Wynder, Anthony Taylor	Email chain regarding revisions to Carson Gardens Mobilehome Park Resolution	Deliberative Process Privilege; Mental Process Privilege Work Product Privilege
1/29/08	Mark Alpert	Ken Freschauf	Letter regarding final decision of Rent Board	Attorney-Client Privilege
			Draft Declaration of Kenneth Freschauf	Attorney-Client Privilege

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DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
			Draft [Proposed] Judgment Granting in Park Peremptory Writ of Mandamus	Attorney-Client Privilege
7/21/08	William Wynder	Ken Freschauf, Linda Mann, Jerome Groomes, Ken Baar, Anthony Taylor, Sunny Soltani	Email regarding Carson Gardens Decision from Court of Appeals	Attorney-Client Privilege
9/21/06	William Wynder	Ken Freschauf, Ken Baar, Anthony Taylor	Email regarding legal arguments	Attorney-Client Privilege
3/27/06	William Wynder	Ken Freschauf, Ken Baar, Anthony Taylor	Email regarding meeting schedule	Attorney-Client Privilege
3/29/06	William Wynder	Ken Freschauf, Ken Baar, Anthony Taylor	Email regarding meeting schedule	Attorney-Client Privilege
1/31/06	William Wynder	Ken Freschauf, Ken Baar, Anthony Taylor	Email regarding Carson Gardens Appeal	Attorney-Client Privilege
9/21/06	Kenneth Freschauf	William Wynder, Anthony Taylor	Email regarding Carson Gardens Motion for new hearing	Attorney-Client Privilege

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DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
10/16/06	Linda Yarvis	Ken Freschauf, William Wynder, Anthony Taylor	Email with Carson Gardens Opposition	Attorney-Client Privilege
4/6/06	Ken Freschauf	William Wynder, Ken Baar, Anthony Taylor	Email regarding revisions to Carson Gardens Staff Report	Attorney-Client Privilege
			Draft Summary Comparison Chart of Rent Increase Proposals for Carson Gardens Trailer Lodge – (1999 Expense Year)	Attorney-Client Privilege
			Draft Summary Comparison Chart of Rent Increase Proposals for Carson Gardens Mobilehome Park	Attorney-Client Privilege
			Draft Summary Comparison Chart of Rent Increase Proposals for Carson Gardens Trailer Lodge – (1999 Expense Year)	Attorney-Client Privilege
8/22/01			Draft Staff Report to Mobilehome Park Rental Review Board	Attorney-Client Privilege

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DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
5/8/08	William Wynder	Sunny Soltani, Anthony Taylor, Ken Freschauf, Ken Baar	Email regarding Colony Cove Fair Return Application	Attorney-Client Privilege
1/19/08	William Wynder	Ken Freschauf, Anthony Taylor	Draft of Carson Gardens letter	Attorney-Client Privilege
6/20/06	Ken Freschauf	William Wynder, Anthony Taylor	Email regarding 36690.005 Community Asset Mgmt/Carson Gardens Suppl. Writ/Case # BS072845	Attorney-Client Privilege
6/10/08	Ken Freschauf	Anthony Taylor	Email regarding Carson Gardens 2007 MHP Rent Increase Application	Attorney-Client Privilege
11/1/08	William Wynder	Ken Freschauf, Ken Baar, Anthony Taylor	Email regarding Carson Gardens III decision on writ petition	Attorney-Client Privilege
9/25/08	Ken Freschauf	William Wynder, Anthony Taylor	Email regarding comments on Carson Gardens document	Attorney-Client Privilege
5/10/06	Ken Freschauf	Anthony Taylor, Ken Baar	Email regarding Legal Analysis for Carson Gardens' Staff Report	Attorney-Client Privilege

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DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
7/20/06	William Wynder	Ken Freschauf, Anthony Taylor	Email regarding Objections to Discharge of Writ and Request to Take Judicial Notice	Attorney-Client Privilege
			Draft Litigation History and the Board's Task at this Proceeding	Attorney-Client Privilege
12/12/06	Janet Byrne	Anthony Taylor, Belinda Hayes, Donyea Adams, Norberto Boceta	Email regarding PRA Requests from HK&C	Attorney-Client Privilege
12/13/06	Norberto Boceta	Anthony Taylor, Belinda Hayes	Email regarding PRA Requests from HK&C	Attorney-Client Privilege
5/24/06	Ken Freschauf	Anthony Taylor	Email chain regarding closed session memo	Attorney-Client Privilege
5/9/09	William Wynder	Ken Freschauf, Anthony Taylor	Email regarding 36690.005 Community Asset Mgmt/Carson Gardens Suppl. Writ/Case # BS072845	Attorney-Client Privilege
9/18/08	Ken Freschauf	Anthony Taylor	Email regarding scheduling of meeting	Attorney-Client Privilege
9/17/08	Ken Freschauf	Anthony Taylor	Email regarding scheduling of meeting	Attorney-Client Privilege

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DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
5/15/06	Ken Freschauf	Anthony Taylor	Email regarding scheduling of meeting	Attorney-Client Privilege
5/12/06	William Wynder	Anthony Taylor, Ken Freschauf, Ken Baar	Email regarding Hearing regarding Carson Garden's Motion for Remand Order	Attorney-Client Privilege
6/22/06	Jen Freschauf	Anthony Taylor	Email regarding PRA Requests from HK&C	Attorney-Client Privilege
5/3/06	William Wynder	Anthony Taylor, Ken Freschauf, Ken Baar	Email regarding Carson Gardens Remand Order	Attorney-Client Privilege
9/25/08	Anthony Taylor	Ken Freschauf	Email regarding need for Declaration	Attorney-Client Privilege
3/17/06	William Wynder	Anthony Taylor, Ken Freschauf, Ken Baar	Email chain regarding scheduling of meeting	Attorney-Client Privilege
10/31/08	William Wynder	Anthony Taylor, Ken Freschauf, Ken Baar	Email regarding decision on writ petition and next course of action	Attorney-Client Privilege
10/30/08	William Wynder	Anthony Taylor, Ken Freschauf, Ken Baar	Email regarding decision on writ petition and next course of action	Attorney-Client Privilege

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DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
11/3/08	William Wynder	Anthony Taylor, Ken Freschauf, Ken Baar	Email regarding decision on writ petition and next course of action	Attorney-Client Privilege
9/18/08	William Wynder	Sunny Soltani, Anthony Taylor, Ken Freschauf, Ken Baar	Email regarding Indian Springs draft opinion and scheduling of meeting	Attorney-Client Privilege
6/27/06	William Wynder	Anthony Taylor, Ken Freschauf, Ken Baar	Email regarding draft of Carson Resolution	Attorney-Client Privilege
12/22/08	Ken Freschauf	Anthony Taylor, Williams Wynder	Email regarding info. for untimely filing of a general rent increase application	Attorney-Client Privilege
11/15/06	William Wynder	Ken Freschauf, Anthony Taylor, Jerome Groomes	Email regarding ruling in favor of the MRRB on all grounds	Attorney-Client Privilege
9/23/08	Ken Freschauf	Anthony Taylor	Email regarding PRK- Hearings	Attorney-Client Privilege
8/20/08	Eileen Lee	Anthony Taylor	Email regarding billing history	Work Product Privilege
8/20/08			July Ledger Report of Billing	Work Product Privilege

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DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
10/23/08	Eileen Lee	Anthony Taylor, Terry Vickrey, Rhonda Villines, Candace Boyer	Email chair regarding Carson's copy bill	Work Product Privilege
11/22/06	William Wynder	Linda Yarvis, Anthony Taylor	Email chain regarding 11/3/06 Carson Gardens Transcript	Work Product Privilege
			May to August Ledger Report of Billing	Work Product Privilege
			November 2007 – January 2008 Ledger Report of Billing	Work Product Privilege
3/7/08	Fred Galante	Attorneys	Email regarding Carson Audit	Work Product Privilege
10/4/06	Linda Yarvis	Anthony Taylor, William Wynder	Email regarding Ex Parte Notice	Work Product Privilege
6/29/06	Linda Yarvis	Anthony Taylor	Email regarding Carson Gardens completed filing in Dept. 85	Work Product Privilege
10/13/06	Kimberly Bradley	Anthony Taylor, Linda Yarvis	Email regarding Motion to Disqualify opposition due date	Work Product Privilege

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DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
7/9/07	Linda Yarvis	William Wynder, Anthony Taylor, Kimberly Bradley	Email regarding and Notice from Court of Appeal	Work Product Privilege
4/5/06	William Wynder	Anthony Taylor	Email regarding and Draft of Proposed Remand Order	Work Product Privilege
9/4/07	William Wynder	Anthony Taylor	Email regarding receipt of Carson Gardens' brief	Work Product Privilege
8/30/07	William Wynder	Anthony Taylor	Email regarding deadlines of Carson Gardens' brief	Work Product Privilege
7/19/07	William Wynder	Anthony Taylor	Email regarding receipt of Carson Gardens' clerks and reporter's transcripts	Work Product Privilege
5/2/06	William Wynder	Anthony Taylor	Email regarding date of hearing	Work Product Privilege
9/27/06	Jeff Malawy	William Wynder, Anthony Taylor	Email regarding status of brief for Carson Gardens	Work Product Privilege
9/30/08	William Wynder	Anthony Taylor	Email regarding review of brief	Work Product Privilege

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DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
1/24/06	William Wynder	Attorneys	Email regarding and article regarding Court's reversal of rent increases at Carson Mobilehome Park	Work Product Privilege
7/14/06	Kimberly Bradley	Anthony Taylor	Email regarding Carson Gardens Privilege Log	Work Product Privilege
4/19/06	Linda Yarvis	Anthony Taylor	Email regarding filing of Carson Gardens	Work Product Privilege
10/15/07	William Wynder	Anthony Taylor	Email regarding Carson Gardens' Appellate Order	Work Product Privilege
10/16/08	Linda Yarvis	Anthony Taylor	Email regarding Joint Appendix	Work Product Privilege
5/5/08	William Wynder	Glen Tucker	Email regarding Cypress and Carson Litigation Matters	Work Product Privilege
2/8/07	Christy Lopez	Anthony Taylor	Email regarding and case regarding legal research	Work Product Privilege
6/5/06	William Wynder	Anthony Taylor	Email regarding settlement proposal	Work Product Privilege
6/23/06	William Wynder	Anthony Taylor	Email regarding proposed resolution	Work Product Privilege

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DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
6/5/06	William Wynder	Anthony Taylor	Email regarding possible offer	Work Product Privilege
1/29/08	William Wynder	Anthony Taylor, Sunny Soltani	Email regarding and letter regarding Carson Gardens 2007 MHP Rent Increase Application	Work Product Privilege
8/30/07	William Wynder	Anthony Taylor	Email regarding Court of Appeal Notification for B196223	Work Product Privilege
7/21/08	William Wynder	Attorneys	Email regarding and Appellate Decision	Work Product Privilege
11/16/06	William Wynder	Anthony Taylor	Email regarding Carson Gardens Memo	Work Product Privilege
1/25/06	William Wynder	Anthony Taylor	Email regarding and summary of Carson Gardens' rent options	Work Product Privilege
8/20/08	Linda Yarvis	Anthony Taylor	Email regarding and New Stipulation	Work Product Privilege
7/22/08	William Wynder	Anthony Taylor	Email regarding and Carson Gardens Web Page Article	Work Product Privilege

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DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
3/16/06	William Wynder	Anthony Taylor	Email regarding analyzation of judge's ruling	Work Product Privilege
10/4/06	William Wynder	Anthony Taylor	Email regarding California Property Rights Journal Huntington Beach Mobile Home Park Conversion	Work Product Privilege
12/11/08	Dave Aleshire	Glen Tucker, Anthony Taylor, Wesley Miliband	Email regarding and January seminar flyer	Work Product Privilege
7/31/07	Deanne Castore	Anthony Taylor	Email regarding and Proposed Civil Gang Injunction – Varrio Hawaiian Gardens	Work Product Privilege
3/22/06	William Wynder	Anthony Taylor	Email regarding and Insert for 32006 Carson Gardens Response Letter	Work Product Privilege
8/7/07	Deanne Castore	Anthony Taylor	Email regarding Magin Civil Language	Work Product Privilege
8/15/07	Linda Yarvis	William Wynder, Anthony Taylor, Sunny Soltani	Email regarding and appellate filing schedule	Work Product Privilege
2/8/07	Fred Galante	Attorneys	Email regarding Montelello vote	Work Product Privilege

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DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
5/30/08	William Wynder	Anthony Taylor	Email regarding New Carson Gardens Writ Case	Work Product Privilege
9/20/07	William Wynder	Anthony Taylor	Email regarding Padilla and Carson Gardens	Work Product Privilege
4/27/06	Linda Yarvis	Anthony Taylor	Email regarding and Motion for Remand Order & judgment	Work Product Privilege
6/29/06	Linda Yarvis	Anthony Taylor	Email regarding and Carson Gardens Return on Supplemental Writ of Mandate with exhibits	Work Product Privilege
10/23/06	Linda Yarvis	Anthony Taylor	Email regarding and Carson Gardens Reply Motion to Enforce Judgment and Reply to Opposing Motion and exhibits	Work Product Privilege
9/20/06	Linda Yarvis	William Wynder, Anthony Taylor	Email regarding and Carson Gardens Motion to Enforce Judgment	Work Product Privilege
7/20/06	Linda Yarvis	William Wynder, Anthony Taylor	Email regarding and Carson Gardens Notice of Objection of Writ and Request to Take Judicial Notice	Work Product Privilege

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DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
11/28/06	Linda Yarvis	William Wynder, Anthony Taylor	Email regarding and Carson Gardens Motion for Reconsideration & Proposed Order and exhibits	Work Product Privilege
11/27/07	Linda Yarvis	William Wynder, Anthony Taylor	Email regarding and Carson Gardens Reply Brief	Work Product Privilege
7/25/06	Linda Yarvis	Anthony Taylor	Email regarding and Carson Gardens Report	Work Product Privilege
12/3/07	Linda Yarvis	William Wynder, Anthony Taylor	Email regarding and Carson Gardens Appeal	Work Product Privilege
12/3/07	Linda Yarvis	William Wynder, Anthony Taylor	Email regarding and Carson Gardens Letter of Withdraw of Adjustment Under Protect	Work Product Privilege
6/7/07	William Wynder	Anthony Taylor	Email regarding Litigation Report	Work Product Privilege
10/10/06	William Wynder	Anthony Taylor, Dawn Honeywell	Email regarding board member contact information	Work Product Privilege
9/20/06	William Wynder	Anthony Taylor	Email regarding Carson Gardens Motion to Enforce the Writ	Work Product Privilege

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DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
7/1/06	William Wynder	Anthony Taylor	Email regarding scheduling	Work Product Privilege
4/18/06	William Wynder	Anthony Taylor	Email regarding review and comments	Work Product Privilege
3/31/06	Linda Yarvis	Anthony Taylor	Email regarding Court of Appeal record	Work Product Privilege
10/4/06	William Wynder	Anthony Taylor	Email regarding board member contact information	Work Product Privilege
10/3/06	William Wynder	Anthony Taylor	Email regarding legal strategy	Work Product Privilege
6/20/06	William Wynder	Anthony Taylor	Email regarding draft resolution	Work Product Privilege
5/20/06	William Wynder	Anthony Taylor	Email regarding attorneys fees for motion for remand hearing	Work Product Privilege
10/18/07	William Wynder	Anthony Taylor	Email regarding and Revised appellate brief	Work Product Privilege
10/16/07	William Wynder	Anthony Taylor	Email regarding Palm Springs case	Work Product Privilege

01007.0504/272510.1



DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
10/9/07	Dawn Honeywell	Anthony Taylor	Email regarding housing issue and rent review board	Work Product Privilege
9/21/06	William Wynder	Anthony Taylor	Email regarding Motion to Disqualify firm	Work Product Privilege
9/19/06	William Wynder	Anthony Taylor	Email regarding counsel's request for stipulation	Work Product Privilege
10/22/08	William Wynder	Anthony Taylor	Email regarding Response to Evidentiary Objections	Work Product Privilege
6/29/08	William Wynder	Anthony Taylor	Email regarding Return on Supplemental Writ	Work Product Privilege
12/11/06	William Wynder	Anthony Taylor	Email regarding PRA Request	Work Product Privilege
11/15/06	William Wynder	Anthony Taylor	Email regarding ruling on Carson Gardens Motion Requiring any Further Rent Increase	Work Product Privilege
7/4/07	Deanne Castore	Anthony Taylor	Email regarding and draft complaint regarding Hawaiian Gardens	Work Product Privilege
6/26/08	Linda Yarvis	Anthony Taylor	Email regarding and redline of Carson Resolution	Work Product Privilege

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DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
6/23/06	Doug Haubert	Attorneys	Email regarding Rent increase approved for Carson mobile home park	Work Product Privilege
8/10/06	William Wynder	Anthony Taylor	Email regarding and Response to Carson Gardens Objections to Writ Return	Work Product Privilege
4/6/06	William Wynder	Anthony Taylor	Email regarding revisions to Carson Gardens Remand Order	Work Product Privilege
8/26/07	Deanne Castore	Anthony Taylor	Email regarding VHG Injunction	Work Product Privilege
11/14/08	William Wynder	Anthony Taylor	Email regarding proposed revisions and settlement offer	Work Product Privilege
10/30/08	William Wynder	Anthony Taylor	Email regarding Carson Gardens III decision on writ petition	Work Product Privilege
9/26/08	William Wynder	Anthony Taylor	Email chain regarding draft opposition brief	Work Product Privilege
8/15/07	Rick Hicks	Anthony Taylor	Email regarding Gang Injunction	Work Product Privilege

01007.0504/272510.1

DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
9/26/07	Tracy Rinauro	Anthony Taylor	Email regarding Gang Injunction	Work Product Privilege
6/7/06	Williams Wynder	Doug Haubert	Email regarding Judge Janavs	Work Product Privilege
2/16/94	Rochelle Browne	James D. Mellein	Letter regarding General Rent Increase Application	Attorney-Client Privilege
2/1/94	Rochelle Browne	James Mellein	Internal Memorandum regarding Rent Increase Application by Imperial Carson – Debt Service and Fair Return Issues	Attorney-Client Privilege
2/2/94	Shelly Browne	Jim Mellein	Fax Cover Sheet forwarding Internal Memorandum	Attorney-Client Privilege
9/18/95	Rochelle Browne	Adolfo Reyes	Letter regarding Lea Associates Invoices and Invoice	Attorney-Client Privilege
6/1/95	Rochelle Browne	Sheri Repp and Adolfo Reyes	Letter regarding Shangri Lodge Rent Increase Application	Attorney-Client Privilege
5/19/95	John G. Ellis	Rochelle Brown, Esq.	Letter regarding Consulting Services	Attorney-Client Privilege; Deliberative Process Privilege; Mental Process Privilege

01007.0504/272510.1



DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
6/15/95	Rochelle Browne	Adolfo Reyes	Fax Cover Sheet transmitting correspondence and correspondence regarding Shangri Lodge Rent Increase Application and Consulting Services	Attorney-Client Privilege; Deliberative Process Privilege; Mental Process Privilege
6/19/95	Rochelle Browne	Adolfo Reyes	Letter regarding Shangri Lodge Rent Increase Application w/enclosures	Attorney-Client Privilege; Deliberative Process Privilege; Mental Process Privilege
8/3/95	Lea Associates	Rochelle Browne	Invoice for completion of rate of return analysis	Attorney Client; Deliberative Process Privilege; Mental Process Privilege
11/6/95	Rochelle Browne	Mayor and Members of the City Council	Memorandum regarding Pending Litigation	Attorney-Client Privilege
7/19/95	John G. Ellis	Patrick Brown	Letter regarding Consulting Services	Deliberative Process Privilege; Mental Process Privilege
8/7/95	AR	James Mellein	Note regarding calculation of value	Deliberative Process Privilege; Mental Process Privilege
11/16/95	AR	Jim	Note regarding discussion with S. Browne	Attorney-Client Privilege; Deliberative Process Privilege; Mental Process Privilege
6/1/95	Rochelle Browne	Sheri Repp and Adolfo Reyes	Letter regarding Shangri Lodge Rent Increase Application	Attorney-Client Privilege; Deliberative Process Privilege; Mental Process Privilege

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DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
8/7/95	Rochelle Browne	Adolfo Reyes	Letter regarding Mobilehome Park Rental Review Board	Attorney-Client Privilege
10/20/95	Rochelle Browne	James Mellein	Letter regarding Litigation with Fax Cover Sheet	Attorney-Client Privilege
7/25/95	John G. Ellis	Patrick Brown	Amended Analysis	Deliberative Process Privilege; Mental Process Privilege
5/16/95	Adolfo Reyes	Jim Mellein	Regarding Shangri Lodge Mobilehome Park	Deliberative Process Privilege; Mental Process Privilege
7/19/94			Calculator tapes and notes with various figures and calculations	Deliberative Process Privilege; Mental Process Privilege
			Staff Report Calculations and various documents with hand-written notes	Deliberative Process Privilege; Mental Process Privilege
			Copies of pages from review copies of correspondence with hand-written notes and calculations	Deliberative Process Privilege; Mental Process Privilege
9/23/92	Rochelle Browne	MPRRB	Memorandum regarding Legal Interpretation	Attorney-Client Privilege; Deliberative Process; Mental Process Privilege

01007.0504/272510.1

DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
12/11/96			Staff Report to MPRRV	Deliberative Process Privilege; Mental Process Privilege
1/30/97	Patrick D. Brown	Mayor Mitoma and City Council Members	Internal Memorandum re MRRB Hearing of 1/22/97	Deliberative Process Privilege; Mental Process Privilege
1/9/97	Rochelle Browne	James Mellein	Fax Cover Sheet and Draft Staff Report	Attorney-Client Privilege; Deliberative Process; Mental Process Privilege
10/17/96	Rochelle Browne	James Mellein	Letter regarding Rent Increase Application	Attorney-Client Privilege; Deliberative Process; Mental Process Privilege
6/20/96	Rochelle Browne	James Mellein	Letter regarding Rent Increase Application	Attorney-Client Privilege
			Calculator tapes and hand-written notes with various figures and calculations	Deliberative Process Privilege; Mental Process Privilege
2/5/97	Rochelle Browne	Mayor Michael Mitoma	Memorandum regarding Rent Increase	Attorney-Client Privilege
			Copies of pages from review copies of correspondence with hand-written notes and calculations	Deliberative Process Privilege; Mental Process Privilege

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DATE	FROM	TO	DOCUMENT	BASIS FOR PRIVILEGE
			Hand-written notes regarding discussions with counsel and copies of pages from review copies of correspondence and various documents with hand-written notes and calculations	Deliberative Process Privilege; Mental Process Privilege

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**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 2361 Rosecrans Ave., Suite 475, El Segundo, CA 90245.

On **October 26, 2015**, I served true copies of the following document(s) described as **DEFENDANT CITY OF CARSON'S RESPONSES TO PLAINTIFF COLONY COVE PROPERTIES, LLC'S REQUEST FOR PRODUCTION OF DOCUMENTS PROPOUNDED ON DEFENDANT CITY OF CARSON, SET NO. ONE** on the interested parties in this action as follows:

**SEE ATTACHED SERVICE LIST**

**BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Aleshire & Wynder, LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at El Segundo, California.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on **October 26, 2015**, at El Segundo, California.

  
DIANE N. BRANCHE

ALESHIRE &  
WYNDER, LLP  
ATTORNEYS AT LAW





**SERVICE LIST**  
**Colony Cove Properties, LLC v. City of Carson, et al.**  
**Case No. CV14-03242 PSG**

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Thomas W. Casparian, Esq.  
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*Attorneys for Plaintiff*  
*Colony Cove Properties, LLC*

ALESHIRE &  
WYNDER LLP  
ATTORNEYS AT LAW



# **EXHIBIT 3**

## Yen Hope

---

**From:** Jeff M. Malawy <jmalawy@awattorneys.com>  
**Sent:** Friday, January 08, 2016 5:42 PM  
**To:** Yen Hope  
**Cc:** June S. Ailin; Stephen R. Onstot; Margaret Rose; Lara Leitner; Thomas Casparian; 'dtully@omm.com'; 'Close, Matthew W.'  
**Subject:** RE: Colony Cove v. Carson

Yen -- Baar's meeting in San Jose is Wednesday, January 27. Based on his schedule and A&W's schedule, the best days for his deposition are February 1, 2, or 3. His deposition can be taken in the LA area -- in your Santa Monica office or in downtown. Do any of those dates work for your side?

Also, I have unfortunate news to report about Jim Dear's deposition. Mr. Dear is no longer available on January 22. This is an inconvenience for us as well, as Bill Wynder had planned to be here that day from Ohio. We are trying to get a list of available dates from Mr. Dear for the weeks of January 18, January 25, and February 1.

### Jeff Malawy

**Aleshire & Wynder, LLP** | 18881 Von Karman Ave., Suite 1700, Irvine, CA 92612

Tel: (949) 223-1170 | Dir: (949) 250-5422 | Fax: (949) 223-1180 | [jmalawy@awattorneys.com](mailto:jmalawy@awattorneys.com) | [awattorneys.com](http://awattorneys.com)

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---

**From:** Jeff M. Malawy  
**Sent:** Wednesday, December 30, 2015 7:45 PM  
**To:** 'Yen Hope'  
**Cc:** June S. Ailin; Stephen R. Onstot; Margaret Rose; Lara Leitner; Thomas Casparian; dtully@omm.com; Close, Matthew W.  
**Subject:** RE: Colony Cove v. Carson

Yen -- Mr. Dear is confirmed for January 22 at 10 a.m. in your Santa Monica office. I will provide you available dates for Dr. Baar by January 10.

Our proof of service indicates John Neet was served on November 30, 2015. The process server left the subpoena with the receptionist at his office in Murrieta.

We have not been able to get anywhere with GE. It is unlikely we will schedule another GE PMQ deposition.

### Jeff Malawy

**Aleshire & Wynder, LLP** | 18881 Von Karman Ave., Suite 1700, Irvine, CA 92612

Tel: (949) 223-1170 | Dir: (949) 250-5422 | Fax: (949) 223-1180 | [jmalawy@awattorneys.com](mailto:jmalawy@awattorneys.com) | [awattorneys.com](http://awattorneys.com)

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---

**From:** Yen Hope [<mailto:yhope@gilchristutter.com>]  
**Sent:** Tuesday, December 29, 2015 1:32 PM  
**To:** Jeff M. Malawy  
**Cc:** June S. Ailin; Stephen R. Onstot; Margaret Rose; Lara Leitner; Thomas Casparian; [mclose@omm.com](mailto:mclose@omm.com); [dtully@omm.com](mailto:dtully@omm.com); Close, Matthew W.  
**Subject:** RE: Colony Cove v. Carson

Hi Jeff,

Thank you for accommodating our request regarding Detling.

With respect to Dear and Baar, I don't see how the ball is in our court. You had stated: "It seems to me the best solution is to confirm Dear for January 22 and leave the Baar date floating until at the latest January 10 (likely earlier)." Accordingly, we are confirming Dear for the 22nd and asking that you advise us of Mr. Baar's availability to be deposed, in our Santa Monica office, by the end of next week. I believe the ball is therefore in your court to advise us of Mr. Baar's availability.

Lastly, please let me know if you have successfully served Neet. We are reaching out to him, but have not yet been able to confirm.



Thanks,

**Yen Hope, Esq.**  
**Gilchrist & Rutter**

---

**From:** Jeff M. Malawy [<mailto:jmalawy@awattorneys.com>]  
**Sent:** Tuesday, December 29, 2015 12:24 PM  
**To:** Yen Hope  
**Cc:** June S. Ailin; Stephen R. Onstot; Margaret Rose; Lara Leitner; Thomas Casparian; [mclose@omm.com](mailto:mclose@omm.com); [dtully@omm.com](mailto:dtully@omm.com)  
**Subject:** RE: Colony Cove v. Carson

Hi Yen. Thank you for confirming Detling. An 11 am start time is good for us.

On Dear and Baar, I thought the ball was in your court. See my attached December 17 email to Tom. Let me know if that proposal is ok with you.

Also, I proposed several January dates for the John Neet deposition back on December 16. They were January 7, 8, 11, 13, 14. Let me know as soon as possible which date is best for you and Mr. Neet.

I will get back to you on the GE PMQ.

Thank you.

**Jeff Malawy**  
**Aleshire & Wynder, LLP** | 18881 Von Karman Ave., Suite 1700, Irvine, CA 92612  
Tel: (949) 223-1170 | Dir: (949) 250-5422 | Fax: (949) 223-1180 | [jmalawy@awattorneys.com](mailto:jmalawy@awattorneys.com) | [awattorneys.com](http://awattorneys.com)

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---

**From:** Yen Hope [<mailto:yhope@gilchristutter.com>]  
**Sent:** Monday, December 28, 2015 7:31 PM  
**To:** Jeff M. Malawy



**Cc:** Thomas Casparian; [mclose@omm.com](mailto:mclose@omm.com); [dtully@omm.com](mailto:dtully@omm.com)

**Subject:** Colony Cove v. Carson

Hi Jeff,

We have confirmed that Mr. Detling is available to be deposed on January 7th at Aleshire & Wynder's Irvine office. However, we request that the deposition be pushed back to 11 am. Please let me know if you are amenable to the request.

With respect to Mr. Dear, as you know, we have rescheduled his deposition as an accommodation to Mr. Wynder. Please confirm that Mr. Dear will be available for a deposition on January 22nd at 10 am in our Santa Monica office.

Relatedly, we are still waiting for confirmation of Mr. Baar's deposition date, previously scheduled for January 22nd. Please advise us of Mr. Baar's availability to be deposed, in our Santa Monica office, by the end of next week.

Lastly, please let me know if you have made any progress in scheduling a deposition for GE's PMQ. We have still not received any documents from GE in response to our document subpoena and they have not responded to any of our recent outreach attempts.

Thanks,



**Yen Hope, Esq.**

**Gilchrist & Rutter**

[1299 Ocean Avenue, Suite 900](#)

[Santa Monica, CA 90401](#)

Tel: [\(310\) 393-4000](tel:(310)393-4000)

Fax: [\(310\) 394-4700](tel:(310)394-4700)

# **EXHIBIT 4**

JAMES F. GOLDSTEIN, on 12/18/2015  
COLONY COVE PROPERTIES vs. CITY OF CARSON, et al.

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DISTRICT

COLONY COVE PROPERTIES, LLC )  
a Delaware limited liability )  
company, )

Placed by JAMES F. GOLDSTEIN, on 12/18/2015  
COLONY COVE PROPERTIES vs. CITY OF CARSON, et al.

vs.

CITY OF CARSON, a municipal )  
corporation; CITY OF CARSON )  
MOBILEHOME PARK RENTAL REVIEW )  
BOARD, a public administrative )  
body; and DOES 1 to 10, )  
inclusive, )

Defendants.

Case No. CV14-03242 PSG (PJWx)

Certified Transcript

(Pages 1 - 197)



VIDEOTAPED DEPOSITION OF

323.393.3768 • 888.99.iDepo  
www.iDepoReporters.com  
JAMES F. GOLDSTEIN

Friday, December 18, 2015

Reported by: Irene Nakamura, RPR, CLR  
CA CSR No. 9478, HI CSR No. 496  
NV CSR No. 893, WA CCR No. 3177

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JAMES F. GOLDSTEIN, on 12/18/2015  
COLONY COVE PROPERTIES vs. CITY OF CARSON, et al.

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UNITED STATES DISTRICT COURT  
  
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DISTRICT  
  
COLONY COVE PROPERTIES, LLC, )  
a Delaware limited liability )  
company, )  
Plaintiff, )  
JAMES F. GOLDSTEIN, on 12/18/2015  
COLONY COVE PROPERTIES vs. CITY OF CARSON, et al.  
vs. ) Case No. CV14-03242 PSG (PJWx)  
CITY OF CARSON, a municipal )  
corporation; CITY OF CARSON )  
MOBILEHOME PARK RENTAL REVIEW )  
BOARD, a public administrative )  
body; and DOES 1 to 10, )  
inclusive, )  
Defendants. )  
\_\_\_\_\_ )

Videotaped Deposition of James F.  
Goldstein, taken on behalf of Defendants, at  
2361 Rosecrans Avenue, Suite 475, El Segundo,  
California, commencing at 10:01 a.m., Friday,  
December 18, 2015, before Irene Nakamura, Certified  
Shorthand Reporter for the State of California  
No. 9478, RPR, CLR, Hawaii CSR No. 496, Nevada CSR  
No. 893, Washington CCR No. 3177.



JAMES F. GOLDSTEIN, on 12/18/2015  
COLONY COVE PROPERTIES vs. CITY OF CARSON, et al.

Page 3

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20  
21 Also Present:

22 Dennis Davis, Videographer  
23  
24  
25

JAMES F. GOLDSTEIN, on 12/18/2015  
COLONY COVE PROPERTIES vs. CITY OF CARSON, et al.

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1 BY MS. AILIN:

13:44:49

2 Q. And this is a document with page numbers  
3 CC002691 through CC002754. And it has a cover  
4 page on it that says "Loan Agreement Between Colony  
5 Cove Properties, LLC as Borrower and General  
6 Electric Capital Corporation as Lender," dated  
7 March 30, 2006.

13:45:03

13:45:05

13:45:14

13:45:20

13:45:23

13:45:26

8 And do you recall seeing this document  
9 before, Mr. Goldstein?

13:45:32

13:45:34

10 A. Yes.

13:45:35

11 Q. And on page 2731, is that your signature?

13:45:35

12 A. Yes.

13:45:45

13 Q. And on page 2716, there's a paragraph 8.4  
14 that has the title "Operation Maintenance  
15 Inspection Conversion." And in that paragraph on  
16 the next page, 2717, there are some provisions  
17 related to a condominium conversion of Colony Cove  
18 Mobile Estates.

13:45:57

13:46:13

13:46:17

13:46:22

13:46:28

13:46:42

19 Were you already planning to convert  
20 Colony Cove to a condominium before you purchased  
21 it?

13:46:42

13:46:45

13:46:49

22 MR. CASPARIAN: Objection; vague and  
23 ambiguous.

13:46:49

13:46:54

24 When you say "convert," do you mean  
25 seek to --

13:46:54

13:46:56

JAMES F. GOLDSTEIN, on 12/18/2015  
COLONY COVE PROPERTIES vs. CITY OF CARSON, et al.

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1 MS. AILIN: Subdivide it. 13:46:57

2 MR. CASPARIAN: But do you mean seek to 13:46:58

3 obtain the map, or do you mean proceed to actually 13:47:00

4 sell lots? 13:47:02

5 MS. AILIN: Seek to obtain the map, the 13:47:03

6 subdivision approval. So let me re-ask that. 13:47:07

7 BY MS. AILIN: JAMES F. GOLDSTEIN, on 12/18/2015  
COLONY COVE PROPERTIES vs. CITY OF CARSON, et al. 13:47:10

8 Q. Had you already decided before you 13:47:11

9 purchased Colony Cove Mobile Estates that you were 13:47:13

10 going to file an application for subdivision of the 13:47:16

11 mobile home park? 13:47:21

12 A. I had decided to file for a subdivision, 13:47:22

13 but I had not decided to proceed with the 13:47:30

14 subdivision. 13:47:34

15 Q. And have you received the subdivision 13:47:35

16 approval from the City for Colony Cove Mobile 13:47:38

17 Estates? 13:47:43

18 A. Yes, I have. 13:47:43

19 Q. And have you taken any additional steps 13:47:44

20 towards selling units in Colony Cove Mobile 13:47:47

21 Estates? 13:47:50

22 A. No, I haven't. 13:47:50

23 Q. Why not? 13:47:51

24 A. Because the market conditions do not 13:47:52

25 warrant the sale of spaces. 13:48:01

JAMES F. GOLDSTEIN, on 12/18/2015  
COLONY COVE PROPERTIES vs. CITY OF CARSON, et al.

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1 Q. What is it about the market conditions 13:48:06

2 that sale of the spaces is not warranted? 13:48:13

3 A. I don't feel that I would have the ability 13:48:17

4 to sell the spaces at an attractive price at this 13:48:23

5 time. 13:48:34

6 Q. When you say "an attractive price," do you 13:48:34

7 mean attractive to you or attractive to the buyer? 13:48:37

8 A. The price that would be attractive to the 13:48:40

9 buyer would not be a price that would be attractive 13:48:47

10 to me. 13:48:51

11 Q. If you were to sell a unit in Colony Cove, 13:49:01

12 that would change how the rental control ordinance 13:49:09

13 applies to Colony Cove; correct? 13:49:12

14 A. Correct. 13:49:14

15 Q. And if you sold a unit in Colony Cove, you 13:49:14

16 could generate more revenue from Colony Cove; 13:49:20

17 correct? 13:49:25

18 A. Correct. 13:49:25

19 Q. So why don't you do it? 13:49:25

20 A. It was never my intent to get around rent 13:49:27

21 control by virtue of proceeding with the sale of 13:49:36

22 spaces. 13:49:42

23 Q. Then why go through the subdivision 13:49:49

24 process? 13:49:52

25 A. Why did I do it? 13:49:53



JAMES F. GOLDSTEIN, on 12/18/2015  
COLONY COVE PROPERTIES vs. CITY OF CARSON, et al.

Page 100

1 Q. Yes. Why go through the application 13:49:55  
2 process and spend the money that it takes to go 13:49:59  
3 through that process if you don't intend to sell 13:50:03  
4 the spaces? 13:50:07

5 A. As I mentioned before, I always like to 13:50:08  
6 have as many options available to me as possible. 13:50:13  
7 I think that JAMES F. GOLDSTEIN, on 12/18/2015  
COLONY COVE PROPERTIES vs. CITY OF CARSON, et al. in the long run, at some point, the 13:50:18  
8 market might be at a level that warrants selling 13:50:26  
9 the spaces, but I don't know when that is going to 13:50:33  
10 happen. But I want to have the ability to sell 13:50:40  
11 spaces or a future owner to have that ability 13:50:44  
12 because I think it's in my better interest. 13:50:48

13 Q. Before you could sell the spaces in Colony 13:50:53  
14 Cove, there's a process you would have to go 13:50:57  
15 through with the Bureau of Real Estate; correct? 13:50:59

16 A. Correct. 13:51:02

17 Q. And it will take some time to go through 13:51:02  
18 that process; correct? 13:51:05

19 A. Correct. 13:51:06

20 Q. Do you have any idea how long it takes to 13:51:06  
21 go through that process? 13:51:09

22 A. I've been told it's, I think, six to nine 13:51:09  
23 months, something like that. 13:51:15

24 Q. And do you have no concern that the market 13:51:16  
25 could change between when you start that process 13:51:23

JAMES F. GOLDSTEIN, on 12/18/2015  
COLONY COVE PROPERTIES vs. CITY OF CARSON, et al.

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1 and when you complete that process? 13:51:27

2 A. I have minor concern, not major concern. 13:51:28

3 Q. Wouldn't it be preferable to go through 13:51:47

4 that process now so that if the market changes in 13:51:49

5 such a way that selling the units would be 13:51:51

6 feasible, you're ready to go? 13:51:55

7 MR. CASPARIAN: Objection; speculation, 13:51:57

8 incomplete hypothetical, and misstates his prior 13:51:59

9 testimony. 13:52:10

10 THE DEPONENT: I don't feel that market 13:52:10

11 conditions are going to significantly change in the 13:52:16

12 next six months. 13:52:21

13 BY MS. AILIN: 13:52:23

14 Q. From your perspective, what would be an 13:52:31

15 attractive price for a unit in Colony Cove Mobile 13:52:33

16 Estates? 13:52:39

17 MR. CASPARIAN: Today? 13:52:39

18 MS. AILIN: Today. 13:52:40

19 THE DEPONENT: I can't answer that without 13:52:50

20 giving it considerable thought. My only answer to 13:52:51

21 that is currently the prices are not -- I should 13:52:57

22 say the values are not in the range that are of 13:53:04

23 interest to me. 13:53:11

24 BY MS. AILIN: 13:53:12

25 Q. How do you know that? 13:53:12

JAMES F. GOLDSTEIN, on 12/18/2015  
COLONY COVE PROPERTIES vs. CITY OF CARSON, et al.

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1 I, Irene Nakamura, CSR 9478, RPR, CLR, do  
2 hereby declare:

3 That, prior to being examined, the witness  
4 named in the foregoing deposition was by me duly  
5 sworn pursuant to Section 30 (f)(1) of the Federal  
6 Rules of Civil Procedure and the deposition is a  
7 true record of the testimony given by the witness.

8 That said deposition was taken down by me in  
9 shorthand at the time and place therein named and  
10 thereafter reduced to text under my direction.

JAMES F. GOLDSTEIN, on 12/18/2015  
COLONY COVE PROPERTIES vs. CITY OF CARSON, et al.

11 XX\_\_\_\_ That the witness was requested to  
12 review the transcript and make any  
13 changes to the transcript as a result  
14 of that review pursuant to Section  
15 30(e) of the Federal Rules of Civil  
16 Procedure.

17 \_\_\_\_\_ No changes have been provided by the  
18 witness during the period allowed.

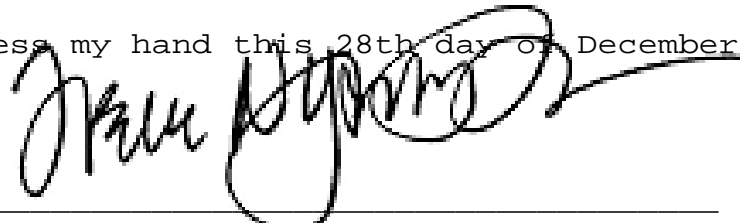
19 \_\_\_\_\_ The changes made by the witness are  
20 appended to the transcript.

21 \_\_\_\_\_ No request was made that the transcript  
22 be reviewed pursuant to Section 30(e)  
23 of the Federal Rules of Civil  
24 Procedure.

25 I further declare that I have no interest in  
the event or the action.

I declare under penalty of perjury under the  
laws of the United States of America that the  
foregoing is true and correct.

Witness my hand this 28th day of December,  
2015.



DEPOSITION OFFICER

# **EXHIBIT 5**



1 UNITED STATES DISTRICT COURT  
2 CENTRAL DISTRICT OF CALIFORNIA

3 -----  
4 COLONY COVE PROPERTIES, LLC,  
5 a Delaware limited liability  
6 company,

7 Plaintiff,

8 v.

9 CITY OF CARSON, a municipal  
10 corporation; CITY OF CARSON  
11 MOBILEHOME PARK RENTAL  
12 REVIEW BOARD, a public  
13 administrative body; and  
14 DOES 1 to 10, inclusive,

15 Defendants.  
16 -----

Case No.  
CV 14-03242  
PSG(PJWx)

17  
18 VIDEOTAPED DEPOSITION OF KEN FRESCHAUF  
19 NEWPORT BEACH, CALIFORNIA  
20 FRIDAY, JANUARY 15, 2016

21 Reported by:

22 DENISE HESS

23 CSR NO. 7564

24 Job No.: 2212875

25 PAGES 1 - 295

Page 1

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

-----  
COLONY COVE PROPERTIES, LLC,  
a Delaware limited liability  
company,

Plaintiff,

v.

CITY OF CARSON, a municipal  
corporation; CITY OF CARSON  
MOBILEHOME PARK RENTAL  
REVIEW BOARD, a public  
administrative body; and  
DOES 1 to 10, inclusive,

Case No.  
CV 14-03242  
PSG(PJWx)

Defendants.  
-----

Videotaped Deposition of KEN FRESCHAUF,  
taken at 610 Newport Center Drive, 17th Floor,  
Newport Beach, California, beginning at  
10:04 a.m. and ending at 5:13 p.m on Friday,  
January 15, 2016, before DENISE HESS,  
CSR No. 7564.

1 APPEARANCES:

2  
3 For Plaintiff:

4 O'MELVENY & MYERS LLC

5 BY: MATTHEW W. CLOSE, ESQ.

6 610 Newport Center Drive

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8 Newport Beach, California 90071

9 (213) 430-6000

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11  
12 For Defendants:

13 ALESHIRE & WYNDER LLP

14 BY: JUNE S. AILIN, ESQ.

15 AND

16 BY: JEFF M. MALAWY, ESQ.

17 2361 Rosecrans Avenue

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19 El Segundo, CA 90245

20 (310) 527-6660

21 jailin@awattorneys.com

22  
23  
24 ALSO PRESENT: JENNIFER WILLIAMS, Videographer

25  
Page 3

1 spaces, pads, or lots? 11:08

2 A The market rate?

3 Q The market value of those -- that

4 piece of land upon which those coaches sit is

5 irrelevant to the setting of the rent levels in 11:08

6 Colony Cove?

7 A Correct.

8 MS. AILIN: Objection; vague and

9 ambiguous.

10 BY MR. CLOSE: 11:08

11 Q Sorry, go ahead and answer.

12 MS. AILIN: Go ahead and answer.

13 BY MR. CLOSE:

14 Q You said correct?

15 A Correct, yes. 11:08

16 Q So the market value of the entire

17 park, then, would be irrelevant to your rent

18 setting decisions for Colony Cove in 2007,

19 correct?

20 MS. AILIN: Objection; vague and 11:09

21 ambiguous.

22 Go ahead and answer.

23 THE WITNESS: Well, what a park

24 owner -- are you talking about the value of the

25 park or what the park owner paid for the park? 11:09

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1 BY MR. CLOSE: 11:09

2 Q I said the value -- well, the value

3 of the park is irrelevant to the rent setting

4 decisions in the City of Carson in the 2007 time

5 period, correct? 11:09

6 A Yes, correct.

7 Q And, in fact, when you were advising

8 the Rent Control Board on Colony Cove rent

9 applications in 2007, you had no idea what the

10 value of the Colony Cove Park was, correct? 11:09

11 MS. AILIN: Objection; deliberative

12 process privilege, mental process privilege.

13 Don't answer.

14 BY MR. CLOSE:

15 Q Over the course of your career at 11:10

16 the City of Carson, would you -- would it be

17 fair to say you reviewed over 200 rent control

18 applications?

19 A Yes.

20 (Whereupon the document referred 11:10

21 to is marked by the reporter as Exhibit 47 for

22 identification and is attached hereto.)

23 BY MR. CLOSE:

24 Q I would like to mark as Exhibit 47 a

25 document that I think you will help me identify 11:11

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1 including debt service, yes. 11:28

2 Q Okay. What -- who else other than  
3 yourself and whoever was serving on the Rent  
4 Control Board, who else at the City of Carson  
5 participated in the evaluation of rent control 11:28  
6 applications or the making of recommendations to  
7 the board on rent control applications in the --  
8 let's say the 2005 to 2008 time period?

9 MS. AILIN: Objection; vague and  
10 ambiguous as to participated. 11:28

11 But go ahead and answer.

12 THE WITNESS: Well, I'd say  
13 99.9 percent of it was probably mine.  
14 Occasionally, I would have to bounce something  
15 off of our attorney's office. I would 11:28  
16 bounce something off my supervisor, Sherry Repp.  
17 And once in a long while, we'd have to call a  
18 consultant in on something. But generally  
19 speaking, it was my decision.

20 BY MR. CLOSE: 11:29

21 Q So generally speaking in the 2005 to  
22 2007 time period, I think you said 99 percent of  
23 the evaluation of rent control applications was  
24 done by you?

25 A Correct. And we're talking about 11:29

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1 just the evaluation of the application itself. 11:29  
2 Q Okay.  
3 A Which could be different than I'm  
4 getting information later on.  
5 Q Okay. 11:29  
6 A But I did the actual evaluations.  
7 Q Okay. Did anyone at the City of  
8 Carson ever tell you to go hard or be difficult  
9 on my client's rent control applications?  
10 MS. AILIN: Objection; deliberative 11:29  
11 process privilege, mental process privilege.  
12 Do not answer.  
13 THE WITNESS: Okay.  
14 BY MR. CLOSE:  
15 Q Did Sherry Repp ever tell you to go 11:30  
16 hard on Mr. Goldstein's applications?  
17 MS. AILIN: Objection; deliberative  
18 process privilege, mental process privilege.  
19 Do not answer.  
20 BY MR. CLOSE: 11:30  
21 Q Did Jim Dear ever tell you to go  
22 hard and go tough on my client's rent  
23 applications?  
24 MS. AILIN: Objection; deliberate  
25 process privilege, mental process privilege. 11:30

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1 Do not answer. 11:30

2 BY MR. CLOSE:

3 Q Will you testify about what elected  
4 officials in the City of Carson told you about  
5 how they wanted you to review rent control 11:30  
6 applications filed by my client?

7 MS. AILIN: Objection; assumes --  
8 well, objection; calls for speculation,  
9 attorney-client privilege.

10 Don't answer. 11:30

11 MR. CLOSE: Are you sure that you  
12 want to make a privilege objection to will you  
13 testify about something? I mean, this is  
14 probably going to go -- I mean, I would like to  
15 try and -- if the witness -- if you're 11:30  
16 instructing the witness not to answer and you're  
17 not going to let me ask about it, I'm not going  
18 to argue about it on the record, but I just want  
19 to make sure we all understand what's happening  
20 here. 11:31

21 I'm inquiring about whether the  
22 person who was 99.9 percent responsible for  
23 making recommendations on rent control  
24 applications ever received pressure or direction  
25 from elected officials about how to do his job 11:31

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1 on our applications. 11:31

2 And you're going to refuse to allow  
3 me to elicit testimony on that subject.

4 Is that -- I just want to make sure  
5 we're correct, because this probably will go to 11:31  
6 the court.

7 MS. AILIN: Let's go off the record.

8 MR. CLOSE: Sure.

9 MS. AILIN: If that's okay.

10 THE VIDEOGRAPHER: Going off the 11:31  
11 record. The time is 11:31.

12 (Brief recess.)

13 THE VIDEOGRAPHER: This is the  
14 beginning of Media 2. We are back on the record  
15 at 11:45. 11:45

16 BY MR. CLOSE:

17 Q Before the break, Mr. Freschauf, I  
18 think you testified that you were the person who  
19 was 99 percent responsible for making the staff  
20 recommendations on rent control applications in 11:45  
21 the 2005, 2007 time period, correct?

22 A Correct.

23 Q In making those recommendations on my  
24 client's rent control applications, did you ever  
25 feel pressure from any elected officials to -- 11:46

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1 to influence your recommendations? 11:46

2 MS. AILIN: Objection; deliberative  
3 process privilege, mental process privilege.

4 Do not answer.

5 BY MR. CLOSE: 11:46

6 Q And I assume you will follow your  
7 client's -- your lawyer's instruction?

8 A Yes.

9 Q Okay. Did the -- did Mayor Jim Dear  
10 ever communicate to you any of his views in the 11:46  
11 2005, 2007 time period in connection with my  
12 client's rent control applications on Colony  
13 Cove?

14 MS. AILIN: Objection; deliberative  
15 process privilege, mental process privilege. 11:46

16 Do not answer.

17 BY MR. CLOSE:

18 Q Did you ever feel any pressure  
19 from any elected official to influence or shade  
20 or affect your recommendation on my client's 11:47  
21 rent control applications?

22 MS. AILIN: Objection; deliberative  
23 process privilege, mental process privilege.

24 Do not answer.

25



1 BY MR. CLOSE: 11:47

2 Q Were the staff reports that were  
3 published on my client's rent control  
4 applications in any way influenced by political  
5 pressure in the City of Carson in your judgment 11:47  
6 and experience?

7 MS. AILIN: Objection; deliberative  
8 process privilege, mental process privilege.

9 Do not answer.

10 BY MR. CLOSE: 11:47

11 Q You were the person who drafted  
12 those staff recommendations on my client's rent  
13 control applications, correct?

14 A With the exception of the MNOI  
15 reports that were done by Dr. Baar, yes. 11:47

16 Q Okay. Is it -- what  
17 consideration -- well, is it -- let me strike  
18 that. Let me start again.

19 Isn't it true that the preferences  
20 and desires of mobilehome park residents are one 11:48  
21 of the most important factors in setting the  
22 rents in the City of Carson?

23 MS. AILIN: Objection; no  
24 foundation, deliberative process privilege,  
25 mental process privilege. 11:48

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1 Do not answer. 11:48

2 BY MR. CLOSE:

3 Q Are the --

4 In your 20-plus years experience,

5 are the views of residents taken into 11:48

6 consideration when the City of Carson sets

7 rents?

8 MS. AILIN: Objection; deliberative

9 process privilege, mental process privilege.

10 Do not answer. 11:48

11 BY MR. CLOSE:

12 Q When doing -- when preparing your

13 staff recommendations on my client's rent

14 control applications, did you give any

15 consideration to the preferences, desires or 11:48

16 views of the residents in the park?

17 MS. AILIN: Objection; deliberative

18 process privilege, mental process privilege.

19 Do not answer.

20 BY MR. CLOSE: 11:49

21 Q Do residents in the park have any

22 opportunity to voice their opinions or views on

23 rent control applications?

24 A Yes.

25 Q Are they allowed to do so in public 11:49

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1 | trying to remember how this was phrased. | 12:39
```

2                   The -- somehow we got on to the  
3       issue of the park being converted. And the  
4       letter was sent out to the park residents within  
5       two weeks of the purchase of the park by your                   12:40  
6       client. And that's how -- in the context of  
7       what was happening, I know some question came up  
8       from a board member or somebody, is my  
9       recollection, that, you know, what I thought was  
10      going to happen or -- because an application had               12:40  
11      been filed at that point. Hadn't been approved  
12      by the City. And that drug -- drug out quite a  
13      while, which had its own life. But ...

14 BY MR. CLOSE:

15	Q	Do you remember --	12:40
----	---	--------------------	-------

16                    Were you under oath when you -- when  
17                    you -- when you speak at these hearings?

18           A       I don't take an oath, but I'm -- so  
19       I don't know what the correct answer for that  
20       is. 12:40

21 Q But you don't take an oath?

22	A	No.
----	---	-----

23 Q But you --

24 As I assume at these hearings you  
25 try to be -- to the best of your ability, 12:40

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1 truthful and accurate? 12:40

2 A Yes.

3 Q Okay.

4 A Yes.

5 Q Was it your view in 2008 that my 12:41

6 client purchased the park to take a one- or

7 two-year loss and then convert the park and make

8 a huge gain?

9 A Yes.

10 Q Has that happened? 12:41

11 A No.

12 Q Almost ten years later, correct?

13 A That's correct.

14 Q Because you thought the park would

15 be converted within a matter of one or two 12:41

16 years, and because you thought that conversion

17 would generate a huge gain, you recommended a

18 rent increase to the board that was well below

19 the amount that would allow my client to cover

20 debt service, correct? 12:41

21 MS. AILIN: Objection; assumes facts

22 not in evidence.

23 But go ahead and answer.

24 THE WITNESS: No. The

25 recommendation came from Dr. Baar. 12:41

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1 BY MR. CLOSE: 12:41

2 Q You didn't make any recommendation

3 on my client's rent control applications?

4 A It was from Dr. Baar.

5 Q So there is a -- oh, the two staff 12:42

6 reports that you told me you wrote, correct?

7 A Right.

8 Q They include a recommendation,

9 correct?

10 A Correct. 12:42

11 Q Those weren't in any way your

12 recommendations?

13 A They were my recommendations, but

14 they were from the report done by Dr. Baar.

15 Q But you had other -- you had also an 12:42

16 analysis that showed \$200 per space, correct?

17 A I had all kinds of analyses in there

18 like we always did.

19 Q And who chose -- what member of the

20 staff decides which of those analyses should be 12:42

21 the basis for the staff recollection?

22 A I do. Sometimes in consultation

23 with -- with counsel and/or expert witnesses.

24 Q Okay. In connection with my

25 client's applications, were you the -- was it 12:42

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1 not in evidence, calls for speculation. 02:24

2 Go ahead and answer.

3 THE WITNESS: Yes.

4 BY MR. CLOSE:

5 Q Okay. Now, because of that 02:24

6 objection, we saw documents before, and you

7 testified before based on your staff report that

8 including debt service and before any

9 disallowances, the park was actually operating

10 at a million or more loss, correct? 02:24

11 A As the initial application was

12 submitted, yes.

13 Q And that was reviewed and verified

14 by the staff subject to some disallowances,

15 correct? 02:24

16 A Correct.

17 Q So in this circumstance, the rent

18 control ordinance and Rent Control Board did not

19 provide a rent level that would allow my client

20 to maintain the park, correct? 02:24

21 MS. AILIN: Objection; vague and

22 ambiguous as to this circumstance.

23 Go ahead and answer.

24 THE WITNESS: Yes.

25

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1 BY MR. CLOSE: 02:24

2 Q That's correct?

3 The rent levels would not allow my

4 client -- would not permit my client to maintain

5 the park, correct? 02:25

6 MS. AILIN: Objection; vague and

7 ambiguous, assumes facts not in evidence, calls

8 for speculation.

9 Go ahead and answer.

10 THE WITNESS: Yes. 02:25

11 BY MR. CLOSE:

12 Q Has the City of Carson, to your

13 knowledge, done any studies to ascertain the

14 income of park residents in Colony Cove?

15 A No. 02:25

16 Q To your knowledge, has the City of

17 Carson done any studies or analyses to determine

18 the net worth of the residents --

19 A I'm sorry. Let's back up.

20 Q Sure. 02:25

21 A Yes to the first question about

22 whether we had done a study or anything.

23 We did send out surveys -- man, I

24 can't remember when it went out. We sent out a

25 mobilehome residents survey and asked for all 02:25

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1 kinds of information. We based it off of 02:25  
2 something similar to the -- your -- the  
3 ten-year ...

4 Q I'd help you if I could. I don't  
5 know. 02:26

6 A Yeah, I'm trying to think of the  
7 term. Every ten years the federal government  
8 does it.

9 Q Census.

10 A Thank you. There we go, the census, 02:26  
11 bing, bing, bing.

12 We took something similar to the  
13 census and took out questions that we didn't  
14 think would apply. This was something that I  
15 believe my boss Sherry Repp got heavily involved 02:26  
16 with. And we put together a survey to send out  
17 to mobilehome residents.

18 Don't remember the time frame that  
19 that went out. I know we did it two different  
20 times. And I believe one of the questions on at 02:26  
21 least one of the two surveys, if not both, had  
22 to do with income levels. And we left the broad  
23 brackets of income, so that we would know  
24 whether they were very low, low, moderate, above  
25 moderate type of calculations. 02:27

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1                   And then household size, I believe                   02:27  
2           we put a chart in there each of the two years,  
3           so the people would be able to tell where they  
4           are at.

5                   So, yes, we did have a vague idea of                   02:27  
6           what generally rents were -- not rents, income.

7                   Q       Based on the residents' own sort of  
8           self-reporting?

9                   A       Right, yeah. It was not probably  
10          the best survey in the world, but it at least                   02:27  
11          gave us something to generally go by.

12                  Q       And probably the residents had a lot  
13          of incentive to use lower numbers for rent  
14          setting purposes, correct?

15                   MS. AILIN: Objection; calls for                   02:27  
16          speculation.

17                   Go ahead and answer.

18                   THE WITNESS: They didn't know why  
19          we were doing this. And I don't know whether it  
20          would affect -- I mean we had a lot of people                   02:27  
21          did not respond at all. I think we had as high  
22          as -- well, 30 percent. But I guess for survey  
23          purposes that's usually statistically pretty  
24          good -- reply from a number of parks.

25                   I believe Colony Cove we had upwards                   02:28

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1 of 30 percent also. 02:28

2 BY MR. CLOSE:

3 Q Was this data relevant to rent  
4 setting?

5 A Not to rent setting itself, no, and 02:28  
6 I don't even remember the context of why we did  
7 this. This was something that Sherry had pushed  
8 and wanted. And I don't remember if it had  
9 something to do with the conversion or what it  
10 was that triggered wanting to get information. 02:28  
11 It wasn't rent control, I know that.

12 MR. CLOSE: I don't believe any of  
13 this has been produced to us. If it's something  
14 the City intends to use in the case, I would  
15 formally request that it be searched for and 02:28  
16 produced. Just for the record, first I've heard  
17 of it.

18 MS. AILIN: I don't think it -- it's  
19 the first I've heard of it. I don't think it  
20 falls within any of the categories of documents 02:28  
21 that were requested.

22 MR. MALAWY: Yeah, I agree with  
23 that.

24 MS. AILIN: And as I'm asking here  
25 right now, I can't say. 02:28

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1 MR. CLOSE: It wasn't in any initial 02:28  
2 disclosures or anything else. I'm just kind  
3 of -- my request is noted if it shows up later.  
4 I don't believe it's been produced to us.

5 And -- 02:29

6 MS. AILIN: Understood.

7 MR. CLOSE: Okay.

8 BY MR. CLOSE:

9 Q Do you have any knowledge of the net  
10 worth of the residents in Colony Cove as of -- 02:29  
11 as of 2006, 2007?

12 MS. AILIN: Objection; vague and  
13 ambiguous, calls for speculation.

14 Go ahead and answer.

15 THE WITNESS: You know, we had a 02:29  
16 chart on that for each park that's in that  
17 report, actually. I can't remember. I mean, I  
18 know majority of the residents were below  
19 moderate income. I don't remember the exact  
20 breakdown, though. 02:29

21 And that's probably changing now, as  
22 time goes by, too. We have got, seems like more  
23 and more people moving into the park that  
24 probably are still working versus a lot of the  
25 retired folks that originally were in the park. 02:29

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1 BY MR. CLOSE: 02:30

2 Q Do you recall at one time on Carson  
3 Harbor my client obtained a rent increase that  
4 was large enough that some residents were  
5 objecting to it? 02:30

6 A Uh-huh.

7 Q Yes? I just want to --  
8 Do you recall in connection with  
9 that, my client offered to provide deferrals and  
10 other accommodations to any residents who were 02:30  
11 unable, because of their income level or  
12 wherewithal, to pay increased rents?

13 A Well, the one that's coming to mind  
14 to me is like a \$55 increase a dozen years or so  
15 ago. Had to do with the removal of the bridge 02:30  
16 in the park. I don't offhand remember him  
17 offering that, although I know he did offer a  
18 couple other times, like during the conversions  
19 and other things to, you know, make concessions  
20 to residents. 02:31

21 So it wouldn't surprise me if you  
22 pulled out a piece of paper that said that, but  
23 I don't recall it offhand.

24 Q I'm not that good a lawyer to pull  
25 it out right now. 02:31

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1 control guidelines, as they existed at the time 02:33  
2 my client purchased the park.

3 And we can talk about it, but I just  
4 want to -- I know there was an amendment to the  
5 guidelines sometime around, but I think this is 02:33  
6 prior to the amendment.

7 Take a moment and familiarize  
8 yourself with it, please.

9 Am I wrong about it?

10 MR. MALAWY: No, you're correct. 02:34

11 MR. CLOSE: Okay. Thanks, Jeff.

12 BY MR. CLOSE:

13 Q So as I said, this is the ordinance  
14 and guidelines as they existed at the time my  
15 client purchased the park. 02:34

16 A Yes.

17 Q Okay. I would like -- I don't think  
18 the ordinance changed, but turning to page 4 of  
19 7 in the top right, it's you know, 47, Ordinance  
20 Section 4704. I guess is it -- it's not -- 02:35  
21 ordinance isn't the right word, is it?

22 A Resolution you're talking about?

23 Q No. It's --

24 MS. AILIN: No. It is part of the  
25 municipal code. 02:35

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1 BY MR. CLOSE: 02:35

2 Q I think it's the code. It's

3 codified in the code.

4 That's right. 4704G at the top of

5 the page there. 02:35

6 A Okay.

7 Q Is it your view that the rent

8 decisions in Year 1 and Year 2 on my client's

9 application were fair, just and reasonable?

10 A Yes. 02:35

11 Q At the time my client purchased the

12 park, is it correct that the guidelines provided

13 that an owner's debt service shall be considered

14 as an allowable operating expense?

15 A And I believe the wording is 02:36

16 generally allowable operating expense.

17 Q Okay. And historically prior --

18 The guidelines were changed after my

19 client purchased the park, correct?

20 A Yes. 02:37

21 Q What's your understanding as to why

22 the guidelines were changed after my client

23 purchased the park?

24 MS. AILIN: Objection; deliberative

25 process and mental process privileges. 02:37

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1 Do not answer. And also potentially 02:37  
2 attorney-client privilege.

3 BY MR. CLOSE:

4 Q So I don't want to -- was there.

5 I don't want any information about 02:37  
6 what the City attorneys may have told you or you  
7 may have heard from them.

8 Were the guidelines -- did the City  
9 of Carson change the guidelines in response to  
10 my client's purchase of Colony Cove? 02:37

11 MS. AILIN: Objection; deliberative  
12 process privilege, mental process privilege.

13 Do not answer.

14 BY MR. CLOSE:

15 Q Can you identify any reason why the 02:37  
16 City of Carson changed the guidelines other than  
17 my client's purchase of Colony Cove?

18 MS. AILIN: Objection, no  
19 foundation, assumes facts not in evidence,  
20 deliberative process privilege and mental 02:38  
21 process privilege.

22 Do not answer.

23 BY MR. CLOSE:

24 Q Because of the foundation objection.

25 The guidelines were changed shortly 02:38

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1 after my client purchased Colony Cove, correct? 02:38  
2 MS. AILIN: Vague and ambiguous as  
3 to shortly after.  
4 THE WITNESS: I'm not sure what the  
5 date was. 02:38  
6 BY MR. CLOSE:  
7 Q Okay.  
8 A Because I don't have --  
9 Q The guidelines were charged after my  
10 client purchased the park, correct? 02:38  
11 A Yes.  
12 Q Okay.  
13 MR. CLOSE: And am I correct,  
14 Counsel, that you're going to instruct on any  
15 question I ask about why those guidelines were 02:38  
16 changed?  
17 MS. AILIN: Yes. And I'll also  
18 point out that Mr. Freschauf was not in a  
19 position to make a decision about whether they  
20 would be changed, but I would stand by the 02:38  
21 deliberative process and mental process  
22 privilege objection as to why.  
23 MR. CLOSE: Okay. Well, he's the  
24 99 percent expert on rent control. And we're  
25 talking to rent control guidelines, so you and I 02:39

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1 have met and conferred off the record on this. 02:39  
2 We disagree. I don't want to spill more ink or  
3 drag the afternoon off. I mean we've used a  
4 period of time off the record to meet and confer  
5 on this. 02:39  
6 BY MR. CLOSE:  
7 Q Is there anything you can point me  
8 to prior to the time my client purchased Colony  
9 Cove that should have put him on notice that the  
10 City would be changing the guidelines? 02:39  
11 MS. AILIN: Objection; because for  
12 speculation.  
13 But go ahead and answer.  
14 THE WITNESS: Changing the  
15 guidelines, well, I'm sure we sent out notices 02:39  
16 on it. We'd also been using Dr. Baar for a  
17 couple of years for various rent control cases  
18 when issues on debt service came up, and  
19 especially when debt service changed and park  
20 owners changed in the park. 02:40  
21 So he should have had some idea that  
22 something was changing.  
23 BY MR. CLOSE:  
24 Q Do you have a recollection if notice  
25 went out to the public of a potential change in 02:40

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1 the guidelines before my client purchased Colony 02:40  
2 Cove?

3 A Of the change in the guidelines  
4 before he purchased, no. I think there was a  
5 bit of time between there. I don't remember the 02:40  
6 exact dates, but --

7 Q Okay, okay. Is there anything in  
8 the guidelines as they existed at the time my  
9 client purchased the park that referred to  
10 Dr. Baar? 02:40

11 A That referred to Dr. Baar?

12 Q Yes.

13 A No.

14 Q So there is nothing about the  
15 guidelines as they existed at the time my client 02:41  
16 purchased the park that would have put any one  
17 on notice about the importance of Dr. Baar,  
18 correct?

19 A No, but I mean, there -- there are  
20 comments in the guidelines, the second page of 02:41  
21 the guidelines, paragraph D, No one factor in  
22 the ordinance is determinative, and the factors  
23 must be considered together and balanced in  
24 light of the purposes of the ordinance and all  
25 relevant evidence. The ordinance does not 02:41

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1 because gross profit could be manipulated 03:02  
2 depending on purchase price of a park, how  
3 expenses were used, versus MNOI, which gives you  
4 a more true, steady picture of how a park is  
5 done over the years. 03:02

6 Q But the MNOI ignores the reality of  
7 actual debt expense that is being paid, correct?

8 A Yes.

9 Q Did the staff rely on the gross  
10 profit maintenance analysis in making its 03:02  
11 recommendations on the Year 1 application by my  
12 client?

13 MS. AILIN: Objection; vague and  
14 ambiguous; deliberative process privilege,  
15 mental process privilege. 03:02

16 Do not answer.

17 THE WITNESS: Okay.

18 MS. AILIN: It's in the document or  
19 it's not in the document.

20 MR. CLOSE: Yeah, okay. 03:03

21 MS. AILIN: You've got the staff  
22 report.

23 MR. CLOSE: Let me try and move it  
24 along.

25

1 BY MR. CLOSE: 03:03

2 Q You would agree that the City did  
3 not give Colony Cove a rent increase sufficient  
4 to cover its debt service for operating years  
5 2007 or 2008, correct? 03:03

6 A Well, as to which part he didn't get  
7 enough for is up to Mr. Goldstein on which part  
8 to pay, but he did not have enough of an  
9 increase to cover all of his allowable expenses,  
10 yes. 03:03

11 Q And was that because the City of  
12 Carson deemed the debt service to be  
13 unreasonably high?

14 MS. AILIN: Objection; deliberative  
15 process privilege, mental process privilege. 03:04

16 Do not answer.

17 BY MR. CLOSE:

18 Q Did the City of Carson in setting  
19 the rents on this park conclude that the debt  
20 service actually being paid was unreasonably 03:04  
21 high?

22 MS. AILIN: Objection; the  
23 resolution speaks for itself.

24 But go ahead and answer.

25 THE WITNESS: Okay, I'm sorry, say 03:04

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1 | it one more time.                                03:04
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2 BY MR. CLOSE:

3 Q Did the City of Carson in setting  
4 the rents on this park, Year 1 and Year 2,  
5 conclude that the debt service my client was 03:04  
6 actually paying was unreasonably high?

7 MS. AILIN: Objection; the  
8 resolution speaks for itself.

9 Go ahead and answer.

10 THE WITNESS: I don't think the debt 03:04  
11 service was the only issue, but I guess in  
12 short, yes, okay.

13 BY MR. CLOSE:

14 Q And the debt service was based on

15 the purchase price, correct? 03:05

16	A	Yes, yes.
----	---	-----------

17                   Q     The same purchase price you used to  
18     calculate the allowable amount of property  
19     taxes, correct?

20	A	That Dr. Baar calculated, yes, that	03:05
21		wasn't my calculation.	

22 Q But the same purchase price that the  
23 City of Carson used to determine the allowable  
24 amount of property taxes, correct?

25	A	That the board approved, yes.	03:05
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1 public. 04:53

2 MR. CLOSE: I'm asking him -- the

3 statement makes no sense, take rent control in a

4 different direction.

5 What -- 04:53

6 MS. AILIN: Well --

7 MR. CLOSE: North, south, east,

8 west, up, down.

9 MS. AILIN: For whatever reason, a

10 decision was made not to disclose the different 04:53

11 direction in this document. And --

12 MR. CLOSE: And you can -- your

13 position is it can be hidden in this litigation

14 from the court and the jury.

15 MS. AILIN: The waiver goes to 04:53

16 what's been disclosed. It doesn't go to what

17 has not been disclosed.

18 MR. CLOSE: I'm not going to spend

19 more time. We're going to go before the court.

20 My position is, just to be clear, 04:53

21 the City of Carson has no grounds to hide from

22 the court, the jury and the public what in the

23 world was meant by the public statement that the

24 mayor and City tried to take control of rent

25 control and take it in a different direction. 04:54

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1 But the court will have to decide 04:54  
2 that.

3 And I'm reserving my right to recall  
4 the witness to examine all these lines of  
5 inquiry, because there has been a ton of 04:54  
6 instructions earlier today that are clearly  
7 improper in terms of what is on the City's  
8 website in my view, and the City Attorney should  
9 know what's on the City's website. There was a  
10 waiver of the attorney-client privilege that the 04:54  
11 City Attorney should know about, the lead  
12 counsel in this case on the pleadings is the  
13 City Attorney of the City of Carson, yet all day  
14 I faced instructions on subjects that are out on  
15 the website. 04:54

16 BY MR. CLOSE:

17 Q Did Mayor Jim Dear request that the  
18 guidelines be changed after my client purchased  
19 the park?

20 MS. AILIN: Objection; vague and 04:55  
21 ambiguous, calls for speculation, because  
22 Mr. Freschauf is -- is not a member of the  
23 legislative body that would make that decision.

24 BY MR. CLOSE:

25 Q Do you know if Mayor Jim Dear was 04:55

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1 involved -- encouraged the City to change the 04:55  
2 rent control guidelines after my client  
3 purchased the park?

4 MS. AILIN: Objection; deliberative  
5 process privilege and mental process privilege. 04:55

6 Do not answer.

7 And legislative privilege actually.

8 BY MR. CLOSE:

9 Q How were at-large members of the  
10 Rent Control Board selected? 04:56

11 A There is a notice period given when  
12 there is a vacancy on the board. I think it  
13 stays open for 30 days, and then any  
14 applications that come in are reviewed by the  
15 mayor and/or City Council who decide, you know, 04:56  
16 who to put on the board. Or on every two-year  
17 election cycle, as they have done on some years  
18 was vacate the entire board and make everyone  
19 reapply, which was more than a problem on one  
20 occasion. 04:56

21 Q Do at-large members play an  
22 important role on the Rent Control Board in  
23 balancing between the park owner representatives  
24 and resident representatives?

25 A Yes. 04:56

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1 Q Isn't it correct that Rent Control 04:57  
2 Board members faced de-appointment in 2007 and  
3 2008 if they would have approved a \$200 per  
4 space rent increase on Colony Cove?

5 MS. AILIN: Objection; no 04:57  
6 foundation, calls for speculation.

7 Go ahead and answer.

8 THE WITNESS: I have no idea.

9 BY MR. CLOSE:

10 Q Okay. Is it your understanding that 04:57  
11 Mayor Jim Dear told board member Vaughn to  
12 recuse himself from a rent control matter if  
13 Mr. Vaughn knew what was good for him?

14 MS. AILIN: Objection; no  
15 foundation, calls for speculation. 04:57

16 Go ahead and answer.

17 THE WITNESS: Are you asking me if  
18 I -- if I had, what, firsthand knowledge or --

19 BY MR. CLOSE:

20 Q No. Is that your understanding that 04:58  
21 Mayor Dear told board member Vaughn to recuse  
22 himself if he was -- if he knew what was good  
23 for him?

24 A Again, it was not within the time  
25 period that we're discussing, but, yes, I 04:58

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1 I, the undersigned, a Certified Shorthand  
2 Reporter of the State of California, do hereby  
3 certify:

4 That the foregoing proceedings were  
5 taken before me at the time and place herein set  
6 forth, that any witnesses in the foregoing  
7 proceedings, prior to testifying, were placed  
8 under oath; that a record of the proceedings was  
9 made by me using machine shorthand which was  
10 thereafter transcribed under my direction;  
11 further, that the foregoing is an accurate  
12 transcription thereof.

13 I further certify that I am neither  
14 financially interested in the action nor a  
15 relative or employee of any attorney of any of  
16 the parties.

17 IN WITNESS WHEREOF, I have this date  
18 subscribed my name.

19 Dated 1/20/16

20  
21   
22

23 DENISE HESS CSR No. 7564  
24  
25

# **EXHIBIT 6**

**Analysis of Reasonable Investment Backed Expectations  
of Colony Cove Mobile Estates  
and  
Discussion of Treatment of Debt Service and Rationale for Maintenance of  
Net Operating Income Fair Return Standard under Rent Regulation  
(Carson, California)**

Kenneth K. Baar, Ph.D  
(January 2016)

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This report was prepared on behalf of the City of Carson. The opinions expressed herein are those of the author and do not necessarily represent the views of the City or of the Mobilehome Rental Review Board.

**1. Did the Park Owner Have a Reasonable "Investment Backed Expectation" that a Rent Increase Could be Obtained to Cover Its Debt Service**

In this analysis, this author's views of what constitutes an "investment backed expectation" are based on the concepts that: " 'Distinct investment-backed expectations' implies reasonable probability," "those who do business in a regulated field cannot object if the legislative scheme is buttressed by subsequent amendments to achieve the legislative end," and the current legislative scheme and the decisions implementing that scheme should be taken into account in formulating what is a reasonable investment backed expectation.

***A. The ordinance and regulations in place when the Park Owner purchased the property did not command the allowance of debt-service pass-through***

The Park Owner purchased Colony Cove in April, 2006.

When the park owner purchased the property the ordinance set forth broad principles in regard to the setting of maximum allowable rents. It stated that the Board shall set rents at levels that protect mobilehome owners from "excessive" rent increases while allowing a park owner "a fair return on investment." Rather than containing a specific formula or standard for setting allowable rents or creating a right to a rent adjustment based on a single factor, the ordinance included a list of factors that shall be considered. These directions were subject to the qualification that "no one (1) factor shall be determinative."

The ordinance stated:

**The Board shall grant such rent increases as it determines to be fair, just and reasonable. A rent increase is fair, just and reasonable if it protects Homeowners from excessive rent increases and allows a fair return on investment to the Park Owner. The Board shall consider the following factors and any Guidelines adopted by the City Council, as well as any other relevant factors, in making its determination and no one (1) factor shall be determinative. (Ordinance, Section 4704)**

The terms "*no one (1) factor shall be determinative*" pointed to a process in which differing factors could be considered and given differing weights in setting rents, as opposed to creating a right to a rent adjustment based on a single factor.

The ordinance did not list debt service as a factor to be considered; but the ordinance directed the Board to consider "Guidelines" adopted pursuant to the ordinance. The Guidelines provided that debt service "shall be considered". However, the direction to consider debt service was subject to qualifications in regard to the extent to which debt service would be considered. That extent was dependent on the reasonability of the debt service "in light of existing rents."

**Debt service shall be considered as an allowable operating expense. Debt service obtained after the adoption the ordinance shall be an allowable operating expense to the extent that it is reasonable in light of the existing rents and prudent financing procedures. (Guidelines, Sec. II.A.2.f)**

The Guidelines also stated that a "Gross Profits Maintenance analysis" (GPM) "shall be performed." (Guidelines, Sec. II.B) A GPM analysis takes into account mortgage payments and operating expenses in order to determine cash flow. (A GPM analysis may be distinguished from a "maintenance of net operating income (MNOI) analysis" which is based on a calculation of net operating income (income net of operating expenses without consideration of debt service.)

While the Guidelines require the performance of the GPM analysis they reiterated the concept in the ordinance that the no single factor shall be determinative by stating that this factor shall be "considered in conjunction with other factors" and shall not "create any entitlement."

**This analysis shall be considered in conjunction with other factors; however, it shall not "create any entitlement." (Guidelines, Sec.II.B.)**

One may debate precisely what the ordinance and the Guidelines would require in a particular case. However, at a minimum, these terms provided notice of a significant probability that an increase in debt service may not be covered by an allowable rent adjustment.

Also, the ordinance provided notice and direction that consideration of other factors could offset consideration based on any single factor including an allowance for increases in debt service. Most notably the ordinance contained the purpose of preventing "excessive" rent increases.



**B. The Circumstances in the *Colony Cove* case pointed to a possible limitation or exclusion of the debt service in setting the allowable rent.**

As indicated the Guidelines provided that debt service shall be an allowable factor in determining the permissible rent to the extent the debt service was "reasonable in light of the existing rents." In this case, the Park Owner expected the Board to consider whether the existing rents were reasonable in light of the debt service. However, the Guidelines directed consideration of whether the debt service was reasonable in light of the existing rents.

In this case of Colony Cove, claimed that an increase in monthly space rents of \$342.46 was required to cover debt service and maintain gross profits (cash flow).<sup>1</sup> Clearly, there was a significant possibility that the purpose in the ordinance of preventing "excessive" increases would be an offsetting factor and that the debt service would not be considered reasonable.

**C. Since 1996 the Board Had Not Allowed a Substantial Rent Increase Based on an Increase in Debt Service (Except under one special circumstance.)**

**City Analysis of Debt Service As a Factor in Setting Allowable Rents Provided to Board**

In the Carson Gardens rent increase application submitted in 2004 (by another park owner), the applicant submitted a detailed memorandum about why the GPM formula, including the debt service factor, should be considered. The applicant's memorandum stated that "the Board invariably uses the GPM method, as the dispositive method for rent calculations." In support of the analysis, the applicant included an "Analysis of Resolutions and Dispositive Methodology," which consists of a table which lists the methodology used in each of 31 Board decisions. The applicant's memorandum stated: "Of thirty (sic) 31 Board decisions since 1996 to present, only three (3) times has the Board not used the GPM formula for unique reasons inapplicable here."

In that case the city staff prepared a chart which compared the debt service in the base year and in the current year in each case decided by the Board.

The data submitted by the staff to the Board covered the 33 cases, which had considered fair return issues, that had come before Board since 1996. The data

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<sup>1</sup> Colony Cove Rent Increase Application, p. 3 (September 28, 2008), supplied by the City in discovery in this case.

indicated that in 30 out of the 33 cases debt service either decreased, stayed the same, or increased by only a very small amount. (In 21 of the cases debt service decreased. In 4 of the cases debt service remained unchanged. In 5 cases debt service increased by less than \$5.00 per space per month.)

In 3 cases, there was a significant increase in debt service. However, in one of those cases the Board used the CPI rather than the GPM methodology in order to determine the allowable rent increase. In another one of the cases, the Board did not permit any rent increase. In the third case, the debt service increases were equal to \$23.13 per space per month and the Board granted a rent increase of \$15.29.

**Rent Adjustment Cases  
1996-2003  
Impact of Debt Service in Rent Adjustment Determinations**

Impact of Debt Service	No. of Cases
Debt service decreased from base year to current year	21
Debt service did not change	4
Debt service increase less than \$5/month per mobilehome space	5
Debt service increase significant -- award of rent adjustment based on CPI	1
Debt service increase significant no rent increase granted	1
Debt service increase - \$23/space/mo. Rent Board granted \$15.23 rent increase.	1

The foregoing data indicated that from 1996 to 2003 the Board had not granted substantial rent increases based on increases in debt service. Furthermore, in the one case where a rent determinations took into account a significant increase in debt service, on a per space basis the increase was equal to less than one-third of the increase involved in this case.

**Prior Denial of Debt Service Pass-through Involving Rent Increase Application by the Owner of Colony Cove in a Case Involving Another Mobilehome Park**

In 1983, the owner of Colony Cove, submitted a rent increase application, requesting a rent increase that would cover the increased debt service associated with his purchase of the Carson Harbor Village Mobilehome Park in April 1983.



The Board's rent increase decision did not include an allowance for this cost. The Board's decision noted that: "However, the increase in debt service was due to the applicant's purchase of the park for \$8,000,000 in 1983 ... Said purchase was made ... with knowledge of the existing rents and expenses and of the debt which would be incurred as a result of the purchase."<sup>2</sup>

**D. In the Paradise Trailer Park case in 2004, the Board excluded consideration debt service in allowable rent determination.**

The Park Owner presented evidence that from 1999 through 2003, the total of its operating expenses and debt service expenses increased by \$125,268. Most of this increase, \$103,492 out of \$125,268, was attributable to an increase in debt service associated with the purchase mortgage of the new owner.

In its decision, the Board excluded any allowance for the increase in debt service.<sup>3</sup>

**E. Judicial Precedent Involving Carson Set Forth Potential Limitations on Consideration of Increases in Debt Service Its Rent Setting Cases.  
The Carson Gardens Case**

In the Carson Gardens case, the treatment of debt service was the central issue. At the same time, it should be noted that the precedential weight of that case was largely impacted by its procedural posture.

In that case, the debt service on the property had increased from \$0 to \$88,638, an increase of \$76.71 per month per mobilehome space. This increase accounted for most of the \$105.50 rent increase requested by the applicant.

The increase in mortgage costs occurred in conjunction with the sale of the property. If the prior owner had a substantial mortgage (rather than owning the property free and clear), there would have been only a small increase in debt service expenses. If the current owner had paid cash for the property, there would be no allowable cost increase associated with an increase in debt service, although the current owner's overall investment in the property (cash + mortgage) would be the same.

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<sup>2</sup> Rental Review Board Resolution No. 84-057, Section d., Feb. 4, 1984, supplied by the City in discovery in this case.

<sup>3</sup> Rental Review Board Resolution No. 2004-225, (May 12, 2004) (supplied by the City in discovery in this case)

The staff report concluded that it would not be appropriate to consider the increase in debt service:

**Ordinarily, staff would prepare and include an Estimated Gross Profit Maintenance Analysis for this staff report. The purpose of the Estimated Gross Profit Maintenance Analysis is to help determine how a park has been operating since its last general rent increase and/or last hearing before the Board and the effects that inflation may have had on the park's profit level... However, the use of an Estimated Gross Profit Maintenance Analysis would not be appropriate in an instance such as this, in which the park was purchased with such a high proportion of debt, whereas the previous owner had no debt service costs. In such an instance, the expenses over the period under review are not directly comparable. ...<sup>4</sup>**

The report indicated that the gross profit maintenance analysis would "not be appropriate in an instance such as this," (emphasis added) due to an exceptional increase in debt service.

In April 2003 the Superior Court remanded that decision to the Rental Review Board for reconsideration.<sup>5</sup> The Writ that was issued by the Court ordered the Board to take into consideration "reasonable expenses in acquiring the park."

**... apply the gross profits maintenance analysis discussed in the Guidelines ... or another reasonable analysis or methodology that gives due consideration to the Park's actual reasonable operating expenses, including actual reasonable expenses incurred in acquiring the Park, and comports with the requirements of the pre-existing Ordinance and the Guidelines.**

That decision was never appealed. Instead, on remand the Board used an MNOI formula, based on its belief that such an action would be consistent with the writ order.

The Park Owner returned to court contending that because the Board had not considered the park owner's debt service it had not complied with the original writ. The trial court concurred with this conclusion.

The City appealed the trial court opinion. However, the Court of Appeal ruled that by failing to appeal the initial trial court judgment the Board waived the right to raise the issue of whether the Board was required to consider debt service and, therefore the Court of Appeal could not consider this issue. T

However, the Court emphasized that if it were writing on a "clean slate", in the absence of a trial court judgment which could not be reviewed, it was not addressing the "fundamental issue ... whether Carson Gardens was entitled to rely on the Board's use of gross profits methodology in determining a fair return." In other words, the Court stated that it might

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<sup>4</sup> Provided by the City in discovery. Administrative Record in Carson Gardens case, AR 198, Staff Report, p. 198.

<sup>5</sup> *Carson Gardens v. City of Carson Mobilehome Rent Review Board*, BS 072845 (Superior Court, County of Los Angeles, Judgment (March 19, 2003)



have ruled differently in regard to whether the Board was required to use a methodology that considered debt service.

**If we were writing on the proverbial clean slate, our analysis of the propriety of the trial court's order would first require an assessment of a fundamental, controlling issue; the meaning of the Carson ordinance, including whether Carson Gardens was entitled to rely on the Board's use of gross profits maintenance methodology in determining a fair return. .... On the other hand, if the ordinance does not require use of that methodology, and does not require the Board to include debt service costs in operating expenses, then the Board was free to use some other method of determining the amount of a rent increase that would provide a fair return. (See *Carson Mobilehome Park Owners' Assn. v. City of Carson* (1983) 35 Cal.3d. 184, 191 [rent control agencies are not obliged by the state or federal Constitution to fix rents by application of any particular method or formula].)**

**We are not, however, writing on a clean slate. ... by failing to appeal the April 16, 2003 judgment, the Board "waived any right to raise [any] issues" arising out of the judgment. The Board having failed to do so, we cannot now review that issue.<sup>6</sup>**

At the same time, the Court of Appeal concluded that while the Board cannot take new evidence, it was not required to apply "any particular formula or methodology without deviation" and that it can make findings "in consonance with its duty under the ordinance to grant an increase that both 'protects Homeowners from excessive rent increases and allows a fair return on investment...'"

**While the Board cannot take new evidence on remand, nothing in the City's ordinance requires the Board to apply any particular formula or methodology without deviation. Indeed, the city's Guidelines specifically state that the gross profits maintenance analysis "is an aid to assist the Board in applying the factors in the Ordinance and is to be considered together with the factors in [the ordinance], other relevant evidence presented and purposes of the Ordinance," and is not intended to create any entitlement to any particular rent increase. Accordingly we see no reason why the Board may not, on the present administrative record, assess the evidence, consider the results of the gross profits maintenance analysis, and make findings as to the appropriate implementation of that analysis – all in consonance with its duty under the ordinance to grant an increase that both "protects**

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<sup>6</sup> *Carson Gardens, L.L.C. v. City of Carson Mobilehome Park Rental Review Bd.* (2006), 135 Cal. App.4th 856, 867.



**Homeowners from excessive rent increases and allows a fair return on investment..." (Mun. Code Sec.4704, subd (g)).<sup>7</sup>**

At, another point in its decision, the Court explained that "the Board can exercise discretion on the question of whether passing through the entire amount of debt service costs was necessary to provide a fair return":

**... the trial court's order sets a rent increase in an amount the Board expressly found would create a "windfall" for Carson Gardens. Moreover, the court itself expressly recognized that, if the Board had used gross profits maintenance analysis "and would have come to the conclusion that not all of it would be passed because it is too excessive and fifty percent would be fair to add, that's one thing." The court, however, could not tell whether allowing 50 percent would amount to a fair return, "because the City did not use that method." Under these circumstances, we think the court was obliged to remand the case once again, so that the Board can exercise discretion on the question of whether passing through the entire amount of debt service costs was necessary to provide a fair return.<sup>8</sup>**

**F. In Published California Court of Appeal Decisions Involving Fair Return Cases pursuant to Mobilehome Park Rent Control Ordinances of other jurisdictions in 1993 and 1994, Courts held that Consideration of Debt Service in Setting Allowable Rents was not Reasonable or had no Rational Basis**

The general judicial doctrine regarding fair return, which has been frequently reiterated in California appellate decisions has been that: "[r]ent control agencies are not obliged by either the state or federal Constitution to fix rents by application of any particular method or formula."<sup>9</sup> However, in three cases the California Court of Appeal has held that consideration of debt service in a rent setting process has "no reason" or "no rational basis." In one case the Court stated:

**Assume two identical parks both purchased at the same time for \$1 million each. Park A is purchased for cash; Park B is heavily financed. Under Palomar's approach, calculating return based on total historic cost and treating interest payments as typical business expenses would mean that Park A would show a considerably higher operating income than Park B. Assuming a**

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<sup>7</sup> *Id.*, 135 Cal. App.4<sup>th</sup> at \_\_\_\_)

<sup>8</sup> *Id.*, 135 Cal. App.4<sup>th</sup> at 867.

<sup>9</sup> *Kavanau v. Santa Monica Rent Control Board*, 16 Cal.4<sup>th</sup> 761, 768 (1997)

**constant rate of return, the owners of Park B would be entitled to charge higher rents than the owners of Park A. We see no reason why this should be the case.<sup>10</sup>**

In a subsequent opinion, the same Court of Appeal reaffirmed its conclusion in regard to the treatment of debt service expenses. "We have previously rejected the notion that permissible rental rates based on a fair rate of return can vary depending solely on the fortuity of how the acquisition was financed."<sup>11</sup>

**G. Overall Conclusion Regarding Investment Backed Expectations of a Right to a Rent Adjustment Covering a Park Owner's Increase in Debt Service**

In this case, it was clear that a purchaser of a mobilehome park in Carson in 2006 could not have an investment backed expectation that an increase in debt service costs, especially a large increase, would be incorporated into the allowable rent under the City's rent ordinance.

- (i) The City's ordinance and Guidelines set forth qualifications and limitations on the consideration of debt service, including the purpose of preventing "excessive" rent increases and the limitation of not allowing for debt service costs that were not "reasonable in light of existing rents."
- (ii) There was a prior record of Rent Board exclusion of increases in debt service costs associated with park purchases,
- (iii) The appellate courts had not ruled that consideration of debt service would be required,
- (iv) In two cases involving fair rent determinations for mobilehome parks in other cities, a Court of Appeal had held that consideration of debt service had no rational basis.

Rather than having an investment backed expectation of a right to a rent increase that would cover its debt service, at best the Park Owner might have had an expectation that such a rent increase was not an impossibility.

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<sup>10</sup>, *Palomar Mobilehome Park Ass'n v. Mobile Home Rent Review Commission [of San Marcos]*, 16 Cal.App. 4th 481,489 (1993);

<sup>11</sup> *Westwinds Mobile Home Park v. Mobilehome Park Rental Review Bd.*, 30 Cal.App.4th 84, 94 (1994)



**2. Why it is not rational to include purchase mortgage costs in a determination of allowable rents (a fair return calculation)**

Mortgage costs are a standard cost of investors in income producing real estate (as well as other purchasers of real estate). Consideration of mortgage costs is central to calculations by real estate investors of their rate of return.

However, it is not rational to take into account individual owner's mortgage costs in the context of a determination of fair return and of what rents should be permitted under a rent regulation.

Mortgage costs are a part of the purchase cost of a property, constituting the cost of acquiring the capital to undertake the purchase. If mortgage costs are taken into account, the regulatory process becomes circular. Under a standard which includes mortgage debt service as a cost the regulated owner is able to determine the allowable rent by setting the mortgage amount and terms, with the only one on the rent being the market.

Under rent regulation (and land use regulation in general) it becomes the duty of the investor to determine what investment is reasonable in light of the regulation, rather than the regulator's role to determine what rent level or what land use should be permitted based on the costs of the investment.

If mortgage costs are considered under Carson's rent stabilization, two park owners with comparable parks and comparable operating costs may be permitted greatly different rents depending on their mortgages. The practical consequence would be that recent purchasers would be allowed much higher rents than long term owners, who had lower purchase prices and usually much smaller mortgage debt.

Even in the case of park owners who purchased mobilehome parks at about the same time for the same price per mobilehome space, mortgage costs may vary substantially as a result of differences in the portion of the purchase price that was financed with a mortgage.

The general judicial doctrine regarding fair return, which has been frequently reiterated in California appellate decisions has been that: "[r]ent control agencies are not obliged by either the state or federal Constitution to fix rents by application of any particular method or formula."<sup>12</sup> However, in three cases the California Court of Appeal has held that consideration of debt service in a rent setting process has "no reason" or "no rational basis." In one case, the Court stated:

**Assume two identical parks both purchased at the same time for \$1 million each. Park A is purchased for cash; Park B is heavily financed. Under Palomar's approach, calculating return based on**

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<sup>12</sup> *Kavanau v. Santa Monica Rent Control Board*, 16 Cal.4<sup>th</sup> 761, 768 (1997)

**total historic cost and treating interest payments as typical business expenses would mean that Park A would show a considerably higher operating income than Park B. Assuming a constant rate of return, the owners of Park B would be entitled to charge higher rents than the owners of Park A. We see no reason why this should be the case.<sup>13</sup>**

In a subsequent opinion, the same Court of Appeal reaffirmed its conclusion in regard to the treatment of debt service expenses. "We have previously rejected the notion that permissible rental rates based on a fair rate of return can vary depending solely on the fortuity of how the acquisition was financed."<sup>14</sup>

In a recent (2013) opinion, a California Court of Appeal again affirmed the view that tying rents to individual owners' financing arrangements has no rational basis.

**Apart from the inequities that would result from permitting a party who financed its purchase of rent-controlled property to obtain higher rents than a party who paid all cash, there are additional reasons for disregarding debt service. ...debt service arrangements could easily be manipulated for the purpose of obtaining larger rent increases, by applying for an increase based on servicing a high interest loan and then refinancing at a lower interest rate or paying off the loan after the increase was granted. Alternatively, an owner might periodically tap the equity in a valuable piece of rental property, thus increasing the debt load. In any event, we discern no rational basis for tying rents to the vagaries of individual owners' financing arrangements.<sup>15</sup>**

While the foregoing precedent holds that debt service should not be considered, in two cases around 1990, a California Court of Appeal carved out an exception to this rule. The Court held that mobilehome park owners have a vested right to have their debt service considered if the debt service was an allowable expense under the fair return standard in effect at the time the property was purchased.<sup>16</sup> In *Palacio de Anza v. Palm Springs Rent Review Commission*, the Court concluded that the guidelines in effect when the mobilehome park was purchased created vested rights.

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<sup>13</sup> *Id.*, at 489.

<sup>14</sup> *Westwinds Mobile Home Park v. Mobilehome Park Rental Review Bd.*, 30 Cal.App.4th 84, 94 (1994)

<sup>15</sup> *Colony Cove Properties v. City of Carson*, 220 Cal.App. 840,871 (2013), . Courts in other states have reached similar conclusions. In 1978, when considering the constitutionality of an apartment rent control ordinance, the New Jersey Supreme concluded that: "Similarly circumstanced landlords ... must be treated alike. Discrimination based upon the age of mortgages serves no legitimate purpose." *Helmsley v. Borough of Fort Lee*, 394 A.2d. 65,80-81 (1978).

<sup>16</sup> *Palacio de Anza v. Palm Springs Rent Review Com.*, 209 Cal.App.3d. 116 (1989)



[the guidelines]... created land-use property rights which became vested ... when the financing of the ... purchase was undertaken in reliance on the existing rent-control laws. In this sense, [the park owner] enjoys a situation or status analogous to that of one who had established the right to pursue a nonconforming use on land following a zoning change.<sup>17</sup>

In a subsequent case, in 1991, the same court reaffirmed this conclusion.<sup>18</sup>

### **3. The rationale for using a "maintenance of net operating income" (MNOI) standard for determining fair return.**

Under a maintenance of net operating income (MNOI) standard, owners are permitted rent increases which cover increases in operating costs and provide for an increase in net operating income based on the increase in the CPI.

The rationale for a maintenance of net operating income (MNOI) approach is that regulated owners are permitted an equal rate of growth in NOI regardless of their particular purchase and financing arrangements. Therefore, rents are regulated depending on increases in expenses and the inflation rate (Consumer Price Index). It becomes the investors task to determine what investment and financing arrangements make sense in light of the growth in net operating income permitted under the fair return standard. By permitting growth in net operating income, the standard makes room for increasing debt service and finance costs.

This formula provides for reasonable growth in net operating income, which is the portion of rental income that is available to cover reasonable increases in debt service. Rather than considering each owner's particular financing circumstances, it provides all owners with additional net operating income which can cover additional financing costs and/or provide additional cash flow return on investment.

Furthermore, because value is a function (multiple) of net operating income, indexing NOI leads to appreciation in the value of a property, which may be converted into a capital gain. This approach meets the ordinance objectives of providing a fair return on investment and at the same meet its objectives of "protecting" the mobilehome owners from "excessive increases" and providing park owners with a "fair return on investment".

As opposed to considering the specific financing and purchasing arrangements of particular investors, the use of a maintenance of net operating income (MNOI) formula would insure the provision of a fair return while protecting the mobilehome owners from excessive rent increase. The MNOI standard is now widely used in California in fair return cases under mobilehome space rent regulations.

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<sup>17</sup> *Palacio, Id.*, 209 Cal. App.3d at 120.

<sup>18</sup> *El Dorado Palm Springs, Ltd.v. Rent Review Com.*, 230 Cal.App.3d. 335 (1991).

In *Rainbow Disposal v. Mobilehome Park Rental Review Board*, the Court concluded that the MNOI formula is a "fairly constructed formula" which provides a "'just and reasonable" return on ... investment," even if another formula may provide a higher return.

...[The] MNOI approach adopted by the Board is a "fairly constructed formula" which provided Rainbow a sufficiently "just and reasonable" return on its investment. ... The Board was not obliged to reject Baar's MNOI analysis just because an historical cost/book value formula using Rainbow's actual cost of acquisition and a 10 percent rate of return would have yielded a higher rent increase.<sup>19</sup>

Prior to the Rainbow case, in several cases, California appellate courts approved the MNOI method. In *Oceanside Mobilehome Park Owners' Ass'n v. City Oceanside* and *Baker v. City of Santa Monica*, California appellate courts upheld maintenance of net operating income fair return standards.<sup>20</sup> In *Oceanside* the Court found that the standard was reasonable because it allowed an owner to maintain prior levels of profit.

  
Kenneth K. Baar

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<sup>19</sup> *Rainbow Disposal v. Mobilehome Park Rental Review Board* [Escondido], 64 Cal.App.4<sup>th</sup> 1159, 1172 (1998)

<sup>20</sup> *Oceanside Mobilehome Park Owners' Ass'n v. City of Oceanside*, 157 Cal.App.887 (1984); *Baker v. City of Santa Monica*, 181 Cal.App.3d, 972 (1986)



# **EXHIBIT 7**

## GUIDELINES FOR IMPLEMENTATION OF THE MOBILEHOME SPACE RENT CONTROL ORDINANCE

These Guidelines are intended to assist the Board in implementing the Ordinance. However, the purpose of the Ordinance and the provisions of the Ordinance are controlling.

### I. Purpose and General Principles

A. The purpose of the Ordinance is to protect the homeowners who rent spaces in mobilehome parks in the City from excessive rents and to allow Park Owners to earn a "just and reasonable" or "fair" return on investment. Mobilehome owners ("homeowners") are a uniquely vulnerable group of tenants due to the investment made in purchasing and maintaining their homes and the high cost and difficulty involved in attempting to move a home. Additionally, many of the homeowners in the City are seniors on fixed incomes and many have low or moderate incomes. Unlike apartment tenants, homeowners cannot just pack their personal belongings and move if rents increase to a level they cannot afford. In order not to lose the considerable investment made in purchasing and maintaining their homes, they must either sell their home in place in the park or move their home if they cannot afford the rent. However, it is very costly to move a home and even when vacant spaces are available in the surrounding area, the parks having those vacant spaces often restrict them to rental by new mobilehomes and will not accept homes being relocated from another park. Thus, moving the mobilehome is not generally a feasible alternative. A homeowner who can no longer afford the rent must sell the home quickly to avoid being evicted or defaulting on the mortgage on the home. However, excessive rents make a home difficult to sell and often require the homeowner to sell the home at a price which is insufficient to allow recovery of the investment made in the home.

B. Prior approval of the Board is required before any rent increase may be charged unless a specific exception is provided in the California Mobilehome Residency Law, Civil Code § 798, et seq. That Law exempts spaces subject to long term leases meeting its requirements from local regulation. It also exempts increases in utility charges under certain circumstances and exempts newly constructed spaces, as defined by the Mobilehome Residency Law.

C. The Ordinance assumes that the profit earned by park owners when the Ordinance was adopted provided a fair return because it was based on rents chosen by the owners prior to regulation. (see §I(F) re rebutting this assumption) The Ordinance, therefore, uses the factors in § 4704(g) to focus on changes in a park's income, expenses and circumstances, including changes in the general economy, to determine whether a rent increase is appropriate to allow the owner to keep earning a fair return, and when a rent increase is appropriate to determine the amount of that increase. The factors also require the Board to

consider any changes in the maintenance, services and amenities provided and rents for spaces in comparable mobilehome parks in the City and any change in the Consumer Price Index ("CPI") since the last hearing on an application by a park. A decrease in, or elimination of, services, maintenance or amenities may constitute a de facto rent increase in violation of the Ordinance and increases in the CPI may, in certain circumstances, indicate the need for a rent increase to offset the erosion of profit by inflation.

D. No one factor in the Ordinance is determinative and the factors must be considered together and balanced in light of the purposes of the Ordinance and all the relevant evidence. The Ordinance does not mandate the use of any formula or guarantee increases equal to the increase in the CPI, or any percentage of the CPI.

E. Each park owner had the right to rebut the assumption that the rents set before the Ordinance was adopted provided a fair return when the park owner applied for the park's first rent increase, but cannot challenge the decisions of the Board except by legal challenge as provided in Ordinance §4798(c). When the Board grants a rent increase it is making a determination that the rent approved is "fair, just and reasonable." In other words, the Board determined that the rent approved was not excessive and allowed the park owner a fair return. The Board cannot reconsider its decisions on a rent adjustment application after they have been embodied in a formal written resolution setting forth the findings of the Board. Therefore, each rent increase application after the first application is evaluated only on the basis of changes in income, expenses, profit, the CPI, maintenance, amenities and services that have occurred since the date of the last increase approved by the Board. A park owner or homeowner who wishes to challenge the decision may do so by seeking review in the courts, as set forth in §4708(c) of the Ordinance.

F. Notwithstanding Section D above, each park owner has the right to apply for an increase on the ground that existing rents do not allow the park owner to earn a fair return, as set forth in §IV below, in addition to an increase based on the factors in § 4704(g).

## II. Income, Operating Expenses And Profit

A. An applicant must provide the most current data which is reasonably available concerning its income, expenses and profit. In general, an application should include expenses, income and profit documentation for all years subsequent to those for which data was supplied with the last application through at least six months prior to the date of the application. An application that does not provide income, expense and profit data for the period between the date of the data submitted for the last increase application through six months prior to the date of

the current application will be deemed incomplete unless satisfactory reason is shown why such data cannot be supplied. (For example, records destroyed by fire, flood, etc., new owner cannot obtain files going back to date of last application.) The necessary data may be provided by calendar year, fiscal year or any other 12 month period selected by the applicant provided that the same 12 month period is used for all data supplied and the applicant utilizes the same 12 month period (e.g., July 1, 1993 through June 30, 1994, January 1, 1993 through December 31, 1993, April 1, 1993 through March 31, 1994) each time it applies for a rent increase. If an applicant changes the 12 month reporting period used, the applicant will have to supply calendar year data for the years since the last increase as well as data presented according to the newly selected 12 month reporting period.

1. Income includes rents, fees for services not included in the rent such as RV parking, cable TV, security, etc., and any other income derived from the Park. Income from utilities is not income within the meaning of the Ordinance. No fee may be charged in addition to the rent for a service that was included in the rent charged when the Ordinance was adopted, except as otherwise provided in the Mobilehome Residency Law.

2. Examples of operating expenses are taxes, utility costs paid to a public utility if not billed separately, maintenance (except maintenance of utilities which is to be paid for from utility income pursuant to PUC ruling), repairs, management and accounting services. All expenses may be reviewed for reasonableness.

a. Owner performed labor is generally an allowable operating expense so long as the amount and type of labor performed is documented and is not duplicated by expenses paid to others.

b. Fees paid to management companies not in excess of 5% of gross rents are generally allowable; higher fees are not generally allowed unless justified by the applicant. Costs incurred for resident managers are allowable in addition to off-site management expenses so long as there is no evidence of duplication of services.

c. Land lease payments are generally an allowable operating expense only when paid to a landowner other than the park owner. Lease payments made by a park owner to an entity owned by the park owner will generally be deemed profit rather than an operating expense.

d. Debt service incurred prior to adoption of the Ordinance to purchase or operate the park is generally an allowable operating expense.

e. Debt Service necessarily incurred to operate the park after adoption of the Ordinance is generally an

allowable operating expense if the financing arrangements were prudent and consistent with customary business practice.

f. Debt service incurred after adoption of the Ordinance to purchase a park may be an allowable operating expense if the purchase price paid was reasonable in light of the rents allowed under the Ordinance and involved prudent and customary financing practices. An applicant shall have the burden of establishing the reasonableness of the purchase price and financing procedures. If the applicant relies on an appraisal, the appraiser must be available for questioning at the hearing. Any other person relied upon must also be available at the hearing. When it is determined that some increase in debt service was reasonably necessary to acquire the park, but that the amount incurred was not reasonable in light of the Ordinance and customary and prudent financing practices, then only the appropriate portion of the debt service incurred may be allowed as an operating expense. The reason for these general rules is that passing on increased debt service due to purchases at prices above those that can be justified by the income earned by the park under rent control or incurred by unusual financing methods, such as 100% financing, would defeat the purpose of rent control.

g. Debt service incurred in making capital improvements to a park may be recovered pursuant to the Capital Improvement Rent Increase provisions set forth below and is not an allowable operating expense.

h. Principal payments on a mortgage are not an allowable operating expense.

i. Reasonable attorneys' fees directly incurred in operating a park are generally allowable operating expenses. Attorneys' fees incurred in presenting applications to the Board, for enforcing court rules or for eviction are examples of fees that are allowable operating expenses. Examples of attorneys' fees which are not allowable are those incurred in connection with challenging the Ordinance or decisions of the Board or in connection with litigation seeking to recover damages or reimbursement from third parties or the City.

j. Charitable and political contributions are not allowable operating expenses.

k. If the operating expenses submitted for a park show a significant increase in expenses which is not due to the increased cost of regular operating expenses, is for an item which is not normally recurring, or is due to accumulating significant expenses in a single year instead of spreading them pursuant to a regular maintenance schedule, or if the expenses for a year are unusually low, the Board may consider the average of the park's last three years of expenses. The Board may consider the pattern of a park's income and expenses instead of



focusing on the income and expenses for a single year in order to avoid unreasonable results.

1. An operating expenditure which covers expenses for more than one year may be pro-rated over the years to which it is attributable even if the cost thereof is paid all in one year in order to avoid unreasonable results. An example of such an operating expense is an insurance premium which covers two or three years. An operating expense which is financed shall also be pro-rated over the life of the loan by which it was financed.

B. Gross Profits Maintenance Analysis. In evaluating a rent increase application, the Board may consider, in addition to the factors specified in §4704(g) of the Ordinance, a "gross profits maintenance analysis," which compares the gross profit level expected from the last rent increase granted to the park prior to the current application ("target profit") to the gross profit shown by the current application. This analysis will be included in the staff report to the Board in addition to analysis concerning the eleven factors when there is sufficient data to permit such an analysis.

The analysis is intended to provide an estimate of whether a park is earning the profit estimated to provide a fair return, as established by the immediately prior rent increase, with some adjustment to reflect any increase in the CPI. The analysis is an aid to assist the Board in applying the factors in the Ordinance and is to be considered together with the factors in §4704(g), other relevant evidence presented and the purposes of the Ordinance. The analysis is not intended to create any entitlement to any particular rent increase.

### III. Comparable Parks and Changes in Services, Maintenance and Amenities

A. Comparable Parks. The Ordinance directs the Board to consider rents in comparable parks in the City. Consideration of the rents for spaces in comparable mobilehome parks can assist the Board in determining the range of reasonable rents for a particular park. The reason the Ordinance specifies parks in the City is that comparison to rents in parks outside the City which are not subject to rent control would promote the excessive upward pressure on rents that the Ordinance is designed to avoid. Rents in unregulated markets are the result of the unequal bargaining power which arises from the shortage of spaces for relocating homes and the cost and difficulties inherent in trying to relocate a home. The Ordinance is designed to prevent the excessive rents that can occur in such a market absent regulation. Even if evidence were submitted showing a park in a neighboring jurisdiction with rent control to be comparable in quality, amenities, services and location, evidence would be required concerning the nature of the rent control regulations in effect in that jurisdiction during the period from 1979 to the



present before the Board could determine whether the park was comparable within the meaning of the Ordinance. Parks subject to the Los Angeles County mobilehome rent regulation ordinance have not been subject to rent regulation at all times since the adoption of the Carson Ordinance and were not and are not now subject to similar rent regulation. Therefore, rents in spaces in parks in unincorporated areas of Los Angeles County are not comparable within the meaning of the Ordinance. Newly constructed spaces, as defined by the Mobilehome Residency Law, are also not comparable spaces within the meaning of the Ordinance even when they are located in City because the rents for those spaces are exempt from rent control and have never been subject to rent regulation.

B. Changes in Park Amenities, Services and Maintenance.

There is a range of rents or zone of reasonableness which will permit a fair return. Decreases in amenities, services and maintenance may indicate that a lesser increase within the zone of reasonableness is appropriate and increases in services, amenities and maintenance may indicate that a greater increase within the zone of reasonableness is appropriate. Further, the elimination of or decrease in maintenance, services and amenities may constitute a de facto rent increase imposed without the approval of the Board in violation of the Ordinance and may, in some circumstances require a decrease in the rent increase that might otherwise be granted or the denial of a rent increase.

IV. OTHER RELEVANT EVIDENCE AND FAIR RETURN

A. The Ordinance is based on the assumption that the rents in effect before the adoption of the Ordinance provided a fair return and park owners attempted to rebut that presumption when they first applied for an increase. Most applications submitted to the Board have been based on the factors in the Ordinance and Park Owners rarely offer evidence concerning their investment in a park, the return being earned on the park or the return being earned by comparable mobilehome parks. However, an applicant may file an application based on the claim that a rent increase is necessary because the park cannot earn a fair return without an increase greater than that permitted by application of the factors in the Ordinance as well as on the grounds provided by the factors in the Ordinance. Such an application must be made at the same time as a regular rent increase application and must include the following information, including supporting documentation and testimony, as well as the information concerning income, expenses and profit which is ordinarily required:

1. The date the applicant purchased the park and the purchase price of the park. If the park was purchased after the adoption of the Ordinance, the applicant shall also provide the rents charged, the net operating income of the park prior to the purchase and an appraisal of the park at the time of purchase. Net operating income means gross income minus allowable operating

expenses (as set forth above) minus debt service. The appraiser performing the appraisal and preparing any appraisal report will be required to attend the hearing on the rent increase application.

2. Any down payment made upon purchase of the park and the total amount of equity in the park on the date of the application. Any refinancing of the park since the date of purchase and whether the proceeds of the refinancing were used to improve the park or for other purposes.

3. Any capital improvements made to the park, the cost thereof and whether that cost was recovered by a capital improvement rent increase.

4. The Overall Rate of Return (ratio of net operating income to purchase price) being earned by comparable mobilehome parks in jurisdictions with and without rent control at the time of the application. The Overall Rate of Return being earned by the applicant's park (after making any adjustments to the purchase price necessary as a result of purchase after the adoption of rent control). Other measures of the rate of return being earned on the applicant's park and comparable parks and other evidence considered relevant by the applicant may also be submitted, but the Board is concerned with return on investment. It will not consider return based on the current fair market value of a park or the value of park property for purposes other than use as a mobilehome park. Any expert relied upon concerning the return being earned by the applicant or comparable parks or investments must be available for testimony and questioning at the hearing. Since mobilehome parks are unique investments, it is unlikely that the return on other types of investments would be found relevant by the Board. Thus, the return on investments which do not have the potential for appreciation in value are not relevant. Similarly, comparison to the return being earned by other residential rental property is not likely to be relevant since the owners of such properties must maintain the actual housing units whereas the owners of mobilehome parks do not have this responsibility or expense because mobilehome owners are responsible for maintaining them and the spaces which they rent. The owners of apartment complexes incur expenses in re-renting vacant units which are not incurred by mobilehome park owners and apartment owners experience a much higher vacancy rate. In the case of mobilehome parks, the existence of a vacant space is uncommon since homes are usually sold in place and rent is generally paid on a space so the home can remain on the space until it is sold even if the owner has moved out. Further, the residents of mobilehome parks invest in improvements which enhance the applicant's investment and this does not occur in other types of residential rental properties.

V. MISCELLANEOUS

A. Evidence concerning the income of the park owner from sources other than the mobilehome park is not relevant and will not be considered. Evidence of the income of homeowners will generally not be considered because the need to protect low income homeowners is one of the reasons for adopting the Ordinance, which is designed to protect them and all homeowners from excessive rents.

B. Evidence concerning expenses, income, profit or changes in services, maintenance and amenities that was considered at the last hearing on a rent increase application by a park will not be reconsidered.

C. The Board cannot grant an increase greater than that specified in the application. Considering a larger increase could deprive affected homeowners of an opportunity to oppose the larger increase. Residents are given notice of the specific increase requested and decide whether to submit written opposition or appear to testify concerning the application based, in part, on the amount of the increase noticed. Although a resident might not oppose the noticed increase and not be present to testify at the hearing for that reason, that resident might have appeared to oppose a larger increase.

VI. Capital Improvement Rent Increases

A. Definition and Examples. Capital Improvement is defined by Section 4701(c) of the Mobilehome Space Rent Control Ordinance to mean "improvements to a mobilehome park and major rehabilitation of a mobilehome park that involve more than ordinary maintenance and repairs."

1. Normal routine maintenance and repair of a park is not a capital improvement. For example, patching of potholes and slurring of asphalt streets and roadways constitute ordinary repairs and are not capital improvements within the meaning of the Ordinance.

2. Replacement or major reconstruction of an existing facility or improvement constitutes a capital improvement. For example, the replacement and/or reconstruction of streets or roadways, constitute capital improvements. Repairs to common areas where such work is part of a major rehabilitation, refurbishment, reconstruction, or remediation project, are also examples of capital improvements.

3. Addition of new facilities in a park, such as a new office or utility room, a sauna, jacuzzi, pool or an addition to a recreation room, are also examples of capital improvements.

4. The costs of major rehabilitation or refurbishment necessitated by acts of nature (earthquake, fire, flood, storm) or major remediation work such as environmental clean-up are also examples of capital improvements.

5. Capital improvements which would otherwise form the basis for a capital improvement rent increase cannot be the basis of such an increase if the park owner charges a fee for the use of the improvement. For example, additional washers and dryers installed for the use of residents cannot be the basis for a capital improvement rent increase if the tenants must pay to use them.

6. Portable items, such as pool furniture and landscaping or gardening equipment, do not constitute capital improvements, unless they are part of a major rehabilitation or refurbishment.

7. Costs of any capital improvement that have been recovered by the owner through any insurance claim, litigation, or other right of indemnity shall be excluded for purposes of determining the amount of any capital improvement.

B. Determination of Allowable Increases.

1. Amortization Periods

In amortizing capital improvements, the following schedule shall be used to determine the amortization period of the capital improvement. For those items not listed, the amortization period for an improvement which has similar characteristics shall be used. The amortization period below may be increased or decreased depending upon the quality of the improvement, the conditions placed upon it or any other relevant factors affecting amortization. The Board may rely upon Department studies or reports it deems appropriate in establishing a greater or lesser amortization period or an amortization period for any item not listed below:

<u>Expenditure</u>	<u>Years</u>
Appliances	
Major Appliances, residential	10-18
Garage door openers	8-11
Garbage disposers, washing machines	6-12
Home electronics	5-12
Telephone systems	9-12
Vacuum-cleaning system	12-17
Exterior	
Awnings and window screens	3-9
Canopies and patio covers	12-19
Exterior paint	3-7
sealers, silicone, etc.	1-5

Fireplaces, chimneys, masonry	35-55
metal	20-35
Shutters	3-7
Storefronts	18-25
entrance doors, automatic	7-20
Floor Covering	
Access (Computer) floor	10-18
Carpet and pad	4-10
Carpet tiles	5-10
Ceramic, quarry, precast terrazzo	
tile/pavers	25-40
Indoor-outdoor carpet	3-10
Linoleum	10-20
Rubber mats	3-6
Terrazzo, bonded or epoxy	25-50
Vinyl composition tile or sheet	7-19
Vinyl or rubber tile or sheet	12-24
Wood flooring	20-35
Hazardous Waste Removal/ Environmental Clean-up	10-20
Interior	
Acoustical ceiling tiles or panels	8-15
Cabinets	15-35
Countertops, laminates	10-35
Doors, hollow core	18-25
solid	25-50
shower	5-25
Drapery	6-12
Lighting	15-35
Paint	3-10
Tile, glazed	20-45
Vertical blinds	5-16
Wallpaper	7-18
Heating, Ventilating and Air Conditioning	
Solar-heating systems	5-15
Exhaust and ventilating fans	6-18
Air ducts, galvanized steel	17-30
aluminum	15-32
fiberglass	14-28
duct insulation	12-24
Fans and motors	14-20
Heating and cooling coils	10-17
Plumbing	
Plumbing fixtures	17-30
enameled steel	5-14
fiberglass	10-20
Faucets and valves	8-16

Water heaters, residential	3-12
commercial	8-20
Pumps, sump and well	8-15
Pipe, galvanized	12-30
copper	20-35
plastic	15-33
Sprinkler and fire protection systems	20-30
residential smoke detectors	10-17
smoke and heat detectors	13-20
fire hose and misc. equip	7-13
Miscellaneous pumps, motors, controls	3-10
Rehabilitation Expenses (Earthquake, fire, flood, storm)	
Architectural and Engineering Fees	3-5
Emergency Services	
Clean-up	3-5
Fencing and Security	3-5
Management	3-5
Tenant Assistance	3-5
Structural Repair and Retrofitting	
Foundation Repair	5-10
Foundation Replacement	15-20
Foundation Bolting	15-20
Iron or Steel Work	15-20
Masonry-Chimney Repair	15-20
Shear Wall Installation	5-10
Grading	15-20
Roofing	
Built-up tar and gravel	10-20
Composition shingles	12-30
Elastomeric	12-25
Metal	13-45
Slate or copper	50-60
Tile, concrete or clay	30-50
Wood shakes	20-35
Wood shingles	16-30
Exposed insulation	19-24
Gutters and downspouts	10-30
Site Improvements	
Bulkheads, concrete	30-40
steel	25-35
wood	20-30
Culverts, concrete	30-40
Curbing, concrete	15-25
Flagpole	16-30



Fencing, chain link	13-20
masonry walls	20-35
wood	6-12
wind screens	4-7
Landscaping, decorative shrubs, trees, etc.	7-20
Outdoor furniture	3-10
Outdoor lighting fixtures	10-20
Parking lot bumpers	3-7
guard rails	7-13
Paving, asphalt	5-17
concrete/brick	10-20
Railings	5-10
Signs	8-14
Sprinklers, galvanized pipe	10-25
plastic pipe	15-28
controllers and pumping systems	8-13
Stairway and decks, wood	7-15
cement composition	12-25
Structural Additions (utility room, offices, guardhouses)	10-20
Swimming pool, commercial, concrete	15-30
Mechanical equipment	10-20
Spas	3-12
Solar pool equipment	7-20
Synthetic sports surfaces	3-8
Tennis court	18-25
asphalt/colored concrete	
resurfacing	3-7
nets	1-3
Underground sewer and water lines	22-32

## 2. Calculation

The monthly rent increase for each mobilehome space based on a capital improvement shall be calculated according to the following formula: Cost of the capital improvement, including interest, divided by the amortization period; the result of that calculation divided by twelve (12) months; and the result of that calculation by the number of all spaces.

For example, the allowable capital improvement rent increase for a street replacement (paving) costing \$10,000 (including interest) and having a useful/amortizable life of ten (10) years is calculated as follows:

$$\frac{\$10,000.00}{10 \text{ years}} = \$1,000.00 \text{ annual amortization cost.}$$

$$\frac{\$1,000.00}{12 \text{ months}} = \$83.33 \text{ monthly amortization cost.}$$

$$\frac{\$83.33}{30 \text{ spaces}} = \$2.78 \text{ monthly rent increase per space for ten years}$$

3. In general, a capital improvement should not be amortized over a period which would yield a monthly per space increase of over ten percent (10%). In such a case, a longer amortization period may be appropriate. The percent increase represented by a particular capital improvement rent increase shall be calculated by dividing the proposed capital improvement rent increase by the amount of the existing base rent. Thus, in the case of the above street replacement example, the percent increase is calculated as follows:

$$\frac{\$2.78 \text{ (proposed capital improvement rent increase)}}{\$130 \text{ (existing base rent)}} = 2.1\% \text{ (rent increase)}$$

In cases where a longer amortization period is used to avoid a monthly per space increase of over ten percent (10%), interest at the legal rate of interest shall be allowed over the entire amortization period.

4. Notwithstanding the subsections above, based upon the circumstances of a particular case, the Board shall have the discretion to determine capital improvement costs or appropriate amortization in any alternative manner necessary to protect the residents of the mobilehome park from excessive rents while ensuring the park owner receives a fair return.

C. Cost of the Capital Improvement. The applicant shall provide documentary evidence of the actual cost incurred for the capital improvement. The cost thereof shall include the interest expense incurred on money borrowed to pay for the capital improvement. In those cases where the park owner finances the capital improvement or a part thereof with his/her own funds, interest at the legal rate of interest computed over a reasonable amount of time shall be included as a part of the capital improvement cost. In determining the reasonable amount of time over which interest shall be allowed, the Board shall be guided by the current practices of state and federally chartered banks and/or savings & loan associations as to the length of time for repayment of improvement loans, provided, however, that the time shall not exceed the amortization period used in calculating the allowable capital improvement rent increase. The staff report shall provide data to the Board concerning the reasonable amount of time over which interest shall be allowed.

D. Application Procedures.

1. An applicant may, but is not required to, submit an application for a capital improvement rent increase at the same time as the application for a general rent increase. However, if an application for a general rent increase and an application for a capital improvement rent increase for the same park are submitted together they will be considered on the same hearing date except in unusual circumstances.

2. An application for a capital improvement rent increase is to be evaluated and heard separately from an application for a general rent increase. A separate application form must be submitted for each type of rent increase application. When a general rent increase application and a capital improvement rent increase application are filed together, the capital improvement rent increase application shall be heard first.

3. A fee shall be charged for each rent increase application. However, if an application for a capital improvement rent increase and an application for a general rent increase for the same park are submitted together, only one fee will be charged.

4. When the owner submits an application for both a general rent increase and a capital improvement increase at the same time and they are set for hearing on the same date, the notice to tenants prepared and sent by staff shall indicate that both increases are requested and will be heard on the same hearing date but will be heard separately. On the hearing date set to consider the applications the Board shall hold a separate public hearing on each application and the capital improvement rent increase application shall be heard first.

# **EXHIBIT 8**

KENNETH BAAR - 02/02/2016

1	UNITED STATES DISTRICT COURT	
2	CENTRAL DISTRICT OF CALIFORNIA	
3		
4	COLONY COVE PROPERTIES, LLC, a	) No. CV14-03242
5	Delaware limited liability	) PSG (PJWx)
6	company,	)
7	Plaintiff,	) Volume 1
8	vs.	) Pages 1 to 250
9	CITY OF CARSON, a municipal	)
10	corporation; CITY OF CARSON	)
11	MOBILEHOME PARK RENTAL REVIEW	)
12	BOARD, a public administrative	)
13	body; and DOES 1 to 10, inclusive,	)
14	Defendants.	)
15		)
16		
17		
18	DEPOSITION OF:	
19		
20		
21		
22		
23		
24		
25		

DTI Court Reporting Solutions - Woodland Hills  
1-800-826-0277 www.deposition.com

KENNETH BAAR  
Tuesday, February 2, 2016  
10:01 a.m.

Reported by:  
MONICA T. VOGELBACHER  
CSR No. 6406

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KENNETH BAAR - 02/02/2016

Page 2

1 Deposition of KENNETH BAAR, Volume 1, taken at  
2 1299 Ocean Avenue, Suite 900, Santa Monica, California,  
3 beginning at 10:01 a.m. and ending at 6:52 p.m., on  
4 Tuesday, February 2, 2016, before MONICA T. VOGELBACHER,  
5 Certified Shorthand Reporter No. 6406.

6

7 APPEARANCES:

8

KENNETH BAAR - 02/02/2016

9 For Plaintiff:

10

11 GILCHRIST & RUTTER

12 BY: THOMAS W. CASPARIAN

13 Attorney at Law

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15 Santa Monica, California 90401

16 (310) 393-4000

17 tcasparian@gilchristrutter.com

18

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KENNETH BAAR - 02/02/2016

Page 3

1 APPEARANCES (Continued):

2

3 The Defendants:

4

5 ALESHIRE & WYNDER, LLP

6 BY: JUNE S. AILIN

7 JEFF M. MALAWY

8 Attorney at Law

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11 (310) 527-6665

12 jailin@awattorneys.com

13 jmalawy@awattorneys.com

14

15 Also Present:

16

17 SUSY FORBATH

18

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19

20

21

22

23

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25

KENNETH BAAR - 02/02/2016

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1 A What was your statement, again?

2 Q Pursuant to the ordinance and guidelines, debt  
3 service must be considered in determining a fair, just  
4 and reasonable expense?

5 A Yeah, there is a qualification in that, which  
6 is, you know, the rest of that, you know:

7 "Debt service obtained after the  
8 adoption of the ordinance should be  
9 allowed all operating expenses to the  
10 extent it is reasonable, in light of  
11 the existing rents and prudent  
12 financing procedures."

13 So it's a qualified. Yes, it says it shall be  
14 considered, and then the next sentence says it's subject  
15 to this qualification to the extent it's reasonable.

16 Q Understood. So let's dig deeper into that.

17 That's -- according to your report, that's at  
18 II, capital A, 2, small f in the guidelines.

19 A Right.

20 Q Tell me when you've located that within the  
21 guidelines.

22 A Okay, that's on page 6 of 16.

23 Q Okay. And if you could read the first sentence.  
24 You want us to refer to this to qualify the extent to  
25 which debt services is allowable, correct?

KENNETH BAAR - 02/02/2016

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1 A That's correct.

2 Q Okay. If you could read the first sentence of  
3 what you're referring to here.

4 A "Debt service incurred after  
5 the adoption of the ordinance to  
6 purchase a park may be an allowable  
7 operating expense if the purchase  
8 price paid was reasonable in light of  
9 the rents allowed under the ordinance  
10 and involved prudent and customary  
11 financing practices."

12 Q Okay. And in your report, you state, and  
13 purporting to quote that very same section, it seems:

14 "Debt service shall be considered as  
15 an allowable operating expense. Debt  
16 service obtained after the adoption of  
17 the ordinance shall be an allowable  
18 operating expense to the extent that  
19 it is reasonable in light of the  
20 existing rents and prudent financing  
21 procedures."

22 That phrase, "in light of the existing rents,"  
23 does not appear in these guidelines, does it? It  
24 certainly doesn't appear in section 2A2f.

25 A Right, the word "existing" isn't there.

KENNETH BAAR - 02/02/2016

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1 Q Right. The guidelines actually say: "...in  
2 light of the rents allowed under the ordinance..."  
3 Correct?

4 A Yes.

5 Q It does not say, "to the extent that it is  
6 reasonable in light of the existing rents."

7 A Right. Yes. And that's a correction I would  
8 make.

KENNETH BAAR - 02/02/2016

9 Q You've misquoted the guidelines in your report,  
10 haven't you?

11 A Right. I've left -- I put in a word that is not  
12 there.

13 Q No, it's more than just putting in a word,  
14 right? You can take some time. I'm not trying to, you  
15 know, trap you or anything.

16 It's more than just the word "existing rents."  
17 It's "rents allowed under the ordinance," as opposed to  
18 "existing rents."

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19 A Right. Okay, yes.

20 Q And in preparing your report, you relied on your  
21 phrasing of the guidelines as you quoted it here in the  
22 report, correct?

23 A Yes.

24 Q So we don't examine the debt services'  
25 reasonableness in light of existing rents, an investor



KENNETH BAAR - 02/02/2016

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1 should examine the reasonableness of the debt service in  
2 light of what rents are allowed under the ordinance,  
3 correct?

4 A Yes.

5 Q That could change the whole meaning of the  
6 reasonableness of the debt service, couldn't it?

7 A No.

8 MS. AILIN: Objection, argumentative.

9 Go ahead and answer.

10 THE WITNESS: I'd say the rents -- the existing  
11 rents are the rents allowed under the ordinance.

12 BY MR. CASPARIAN:

13 Q Existing rents would be included in this rents  
14 allowed under the ordinance, right?

15 A Yes.

16 Q But rents allowed under the ordinance could also  
17 be future rent increases allowed under the ordinance,  
18 right?

19 MS. AILIN: Objection, vague and ambiguous,  
20 argumentative, calls for speculation.

21 Go ahead and answer.

22 THE WITNESS: Well, if -- put it this way...  
23 Yeah, the rents allowed under the ordinance is not  
24 defined.

25 BY MR. CASPARIAN:

KENNETH BAAR - 02/02/2016

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1 or not a park owner was earning a fair return?

2 A My understanding is no.

3 Q They don't discuss a maintenance of net  
4 operating income formula anywhere in them, do they?

5 A No, they didn't at that time.

6 Q I'm going to direct your attention back to your  
7 2016 report, page 2 of your report.

8 A Okay. KENNETH BAAR - 02/02/2016

9 Q You discuss the gross profit maintenance  
10 analysis. You explain that the guidelines require the  
11 performance of a gross profit maintenance analysis, but  
12 they reiterate that no single factor shall be  
13 determinative, and it shall be considered in conjunction  
14 with other factors, correct?

15 A Yes.

16 Q And then you quote a section of the guidelines  
17 that they do not create an entitlement.

18 Next you state:

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19 "One may debate precisely what the  
20 ordinance in the guidelines would  
21 require in a particular case.

22 However, at a minimum, these terms  
23 provided notice of a significant  
24 probability that an increase in debt  
25 service may not be covered by an

KENNETH BAAR - 02/02/2016

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1 allowable rent adjustment."

2 Do you mean to say "probability" or do you mean  
3 to say "possibility"?

4 A Okay, I would say possibility.

5 Q So it would be fair to amend your opinion there  
6 to replace "probability" with "possibility"?

7 A Right, when we're talking about the guidelines.

8 Q Fair enough. KENNETH BAAR - 02/02/2016

9 One of the purposes of the ordinance and  
10 guidelines is to prevent excessive rents, correct?

11 A Yes.

12 Q And "excessive" doesn't mean affordable to low  
13 income, right?

14 MS. AILIN: Objection, vague and ambiguous.

15 Go ahead and answer.

16 THE WITNESS: Well, it's not the way I would  
17 define "excessive."

18 BY MR. CASPARIAN:

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19 Q It's really got nothing to do with the income of  
20 the park residents, correct? This isn't like the  
21 inclusionary housing that you were talking about, that  
22 was part of your work done for the city of Berkeley?

23 A Let me say the fair return standards don't take  
24 into account tenant income.

25 Q All right.

KENNETH BAAR - 02/02/2016

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1 expense calculation or not.

2 Q Maybe I misunderstood your testimony.

3 I thought your report and your testimony today  
4 was that in 32 of these 33 cases, the final rent decision  
5 was based on the gross profit maintenance formula.

6 A Yes. Okay, all I'm saying, they used the gross  
7 profit maintenance formula, and I'm just saying, you  
8 know, when they applied it, I don't remember looking at  
9 the final calculation, I looked at the fact that the debt  
10 service decreased in 21 of those cases. So I don't  
11 remember seeing the mathematical calculations.

12 I think -- I'm not disagreeing with you, I just  
13 don't remember exactly what they did. They used a GPM  
14 analysis.

15 Q When you say "they used the GPM analysis," you  
16 don't mean that it was performed as it was in the Colony  
17 Cove case but not relied on, you mean the GPM formula was  
18 the formula used to determine the rent increase in 32  
19 cases, correct?

20 A That was my understanding what they did.

21 Q And you reviewed the rent decisions themselves?  
22 I don't expect you to have a perfect memory of any of  
23 them. I'm just saying --

24 A Yeah, I remember -- yeah, I don't completely  
25 remember the process, but, yeah, I think I reviewed them.

1 Q Okay. So necessarily, if the final rent Page 155  
2 decision was the result of application of the gross  
3 profit maintenance formula, then, necessarily, the  
4 decrease in debt service was factored into that final  
5 decision?

6 A Yes, I agree with that. All I'm saying is, I  
7 didn't look to see if they necessarily completely  
8 followed it in those cases. I mean --

9 Q You didn't look to see if they did it  
10 accurately?

11 A Right. Or, for example, they said, you know,  
12 "We're not going to reduce it by the reduction in debt  
13 service, we're not going to count what that" -- they did  
14 a GPM analysis. I'm just saying I don't know if they  
15 followed every single step of it as you describe, which  
16 would be the logical result.

17 Q Okay. That wouldn't really be doing the gross  
18 profit maintenance analysis, would it?

19 A Well, I say they wouldn't be following -- you  
20 know, I believe they followed it. I'm just saying  
21 sitting here, if they decide in one case, well, we're  
22 using this GPM, but we're not going to subtract for the  
23 reduction in debt service, I don't remember verifying it.  
24 That's all I'm saying.

25 Q But that would be --



1 STATE OF CALIFORNIA )  
KENNETH BAAR : 02/02/2016 Page 250  
2 COUNTY OF LOS ANGELES )  
3

4 I, the undersigned, a Certified Shorthand  
5 Reporter of the State of California, do hereby certify:

6 That the foregoing proceedings were taken before  
7 me at the time and place herein set forth; that any  
8 witnesses in the foregoing proceedings, prior to  
9 testifying, were placed under oath; that a verbatim  
10 record of the proceedings was made by me using machine  
11 shorthand which was thereafter transcribed under my  
12 direction; further, that the foregoing is a true record  
13 of the testimony given.

14 Before completion of the deposition, review of  
15 the transcript [X] was [ ] was not requested. If  
16 requested, any changes made by the deponent (and provided  
17 to the reporter) during the period allowed are appended  
18 hereto.

19 I further certify that I am not interested in  
20 the outcome of the action.

21 WITNESS my hand this date February 17, 2016.

22  
23   
24

25 MONICA T. VOGELBACHER, CSR No. 6406  
DTI Court Reporting Solutions - Woodland Hills  
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# **EXHIBIT 9**

## **CURRICULUM VITAE**

---

**Kenneth Calvin Baar**  
**Urban Planner & Attorney**  
2151½ Stuart St. Berkeley, Ca. 94705  
kenbaar@aol.com

---

### **Education:**

B.A., 1969, Wesleyan University, Middletown, Conn. Major: Government

J.D., 1973, Hastings College of Law, Univ. of California, San Francisco, Ca.

M.A., 1982, Urban Planning, University of California at Los Angeles

Ph.D., 1989, Urban Planning, University of California at Los Angeles  
(Dissertation topic: "Explaining Crises in Rental Housing Construction: Myth and Schizophrenia in Policy Analysis")

**Foreign Languages:** French and Italian

### **Teaching:**

Instructor, San Francisco State University, Urban Studies Program (1983-1984)

Visiting Professor (Fulbright Scholar), Budapest University of Economic Sciences (Sept. 1991- June 1993)

Visiting Assistant Professor, Urban Planning Department, School of Architecture, Planning, and Preservation, Columbia University, New York (1994 - 1995) (courses: planning law, introduction to housing, comparative housing)

Visiting Professor (Fulbright Scholar), Technical University, Tirana, Albania  
(Introduction to urban planning) (2002-2003)

### **Short Courses, Series of Lectures**

Kiev University Law School, real estate law (1992, one week course)

Polis University, Tirana, Albania, urban planning studios (two week courses, 2009 & 2010)

# **EXHIBIT 10**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

	)	Case No. CV14-03242 PSG
COLONY COVE PROPERTIES, LLC	)	(PJWx)
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
CITY OF CARSON and CITY OF CARSON	)	
	)	
MOBILEHOME PARK RENTAL REVIEW BOARD	)	
	)	
Defendants.	)	
	)	

EXPERT REPORT OF  
PETER A. SALOMON, CPA, CFF

JANUARY 11, 2016



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## **I. RETENTION**

I have been retained by O'Melveny & Myers LLP and Gilchrist & Rutter Professional Corporation, counsel for plaintiff Colony Cove Properties, LLC ("Colony Cove"). I have been asked to offer my expert opinions on the amount of economic damages owed to Colony Cove due to the actions of the City of Carson and the City of Carson Mobilehome Park Rental Review Board ("Defendants"). These actions relate to not providing rent increases that account for the financing costs incurred to purchase a 404-space mobilehome park in the City of Carson (the "Mobilehome Park") on April 4, 2006. I have also been asked to calculate a prejudgment interest rate and calculate the amount of prejudgment interest on these economic damages.

## **II. BACKGROUND**

Colony Cove purchased the Mobilehome Park on April 4, 2006 for \$23,050,000, with a down payment of \$5,050,000 (representing 21.9% of the purchase price) and a mortgage of \$18,000,000.<sup>1</sup> An independent appraisal of the property by Rob Detling indicated the property had a value of \$23 million as of March 30, 2006. There are 403 rentable spaces in the Mobilehome Park.

In the first year of operations (fiscal year ended March 31, 2007) Colony Cove incurred a loss of \$1,082,191, in large part due to costs associated with financing the purchase of the property (interest of \$1,224,681 and loan fees of \$29,461<sup>2</sup> for a total of \$1,254,142).<sup>3</sup> Colony Cove had the expectation when it purchased the property that the costs of financing the property would be considered and included in future rent increases related to the general and fair return rent increases that could be approved by Defendants. This expectation was principally based upon the provisions contained in the City of Carson Guidelines for Implementation of the Mobile Space Rent Control Ordinance ("City of Carson Guidelines"), the prior conduct of Defendants in granting increases in rents for other rent-controlled properties as well as certain judicial rulings.

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<sup>1</sup> First Amended Complaint, paragraphs 19 - 21.

<sup>2</sup> Pursuant to the City of Carson Staff Report corrections to reduce the operating expenses of Colony Cove for the 2007 fiscal year, the actual loan fees paid of \$147,306 are amortized over the 5-year life of the loan at \$29,461 (00733 – 00734).

<sup>3</sup> Colony Cove Mobile Estates Application for Mobilehome Space Rent Increase for the fiscal year ended March 31, 2007, page 11 of 16.

The City of Carson Guidelines provide the following with regards to debt service:

Debt service incurred after adoption of the Ordinance to purchase a park may be an allowable operating expense if the purchase price paid was reasonable in light of the rents allowed under the Ordinance and involved prudent and customary financing practices. An applicant shall have the burden of establishing the reasonableness of the purchase price and financing procedures.<sup>4</sup>

Colony Cove submitted applications for mobilehome space rent increases for the two annual periods ended March 31, 2007 and 2008 (the “Rent Applications”) for both general rent increases and fair return rent increases. As part of both Rent Applications, Colony Cove included its financing costs related to the purchase (\$1,254,142 for 2007 and \$1,353,161 for 2008). The Defendants excluded Colony Cove’s financing costs in determining the amount of the monthly rent increase for the space rentals in the Rent Applications. Defendants awarded a \$36.74 per month, per space, rent increase related to 2007 and a \$25.02 per month, per space, rent increase related to 2008. None of these increases in rent reflected any of Colony Cove’s financing costs. Colony Cove’s average monthly financing cost for each of the 404 spaces was \$258.69 for 2007 and \$279.12 for 2008.

### **III. ECONOMIC DAMAGES**

#### **Monthly Amount of Damages Per Space**

I have created an economic damages model that isolates the impact of Defendants’ exclusion of Colony Cove’s debt service from the calculation of the rent increase. In doing so I considered Colony Cove’s other actual expenses and adopted the adjustments or exclusions made in the City of Carson Staff Report (“Staff Report”) to reduce these actual expenses incurred and make adjustments to inflation to acceptable amounts and levels to the Defendants. This approach or

---

<sup>4</sup> Resolution No. 98-010, Section II. A.2.f.

methodology will isolate the impact of the exclusion of debt service in calculating the rent increase.

To do this I looked at the work in the Staff Report and the conclusions of Defendants in granting the rent increase related to Colony Cove's application for fiscal 2007. I relied upon the work and conclusions related to the Gross Profit Maintenance Standard ("GPM Standard") to isolate the impact of excluding debt service. In doing this I also excluded certain other expenses included in Colony Cove's rent application that were not acceptable to Defendants. I also relied upon the Defendants' finding that 75%, and not 100%, of the 6.19% increase in the Consumer Price Index (for inflation), as contained in the Baar Report,<sup>5</sup> be used to calculate the actual rent increase awarded of \$36.74 per month per space under the maintenance of net operating income approach ("MNOI Approach").

The analysis performed in the Staff Report for the Gross Profit Maintenance Standard for the year ended March 31, 2007, which includes an adjusted and reduced amount of debt service costs, concluded the amount of monthly rent adjustment to be \$200.93 per space. This amount included an adjustment for 100% of the inflation of 6.19% noted above. Because the Defendants concluded that only 75% of the inflation rate was appropriate under the MNOI Approach utilized to award the \$36.74 actual rent increase, I utilized 75% of the inflation rate in my damages model to isolate the impact of the exclusion of debt service in calculating the rent increase. The impact of utilizing 75% of the actual inflation rate is to reduce the \$200.93 amount in the Staff Report to \$198.56.<sup>6</sup>

I then reduced the \$198.56 rent increase amount by the actual amount of the monthly rent increase that was approved by Defendants of \$36.74.<sup>7</sup> The monthly damage per space is the difference between these two amounts, or \$161.82. The annual damages would be \$161.82 multiplied by 403 rental spaces (\$65,213.46 per month) multiplied by 12 months, which equals \$782,561.52 per year. Based upon the appraisal performed in connection with the acquisition of

---

<sup>5</sup> Expert Report of Kenneth K. Baar, Ph.D prepared on behalf of the City of Carson (February 2008) entitled Analysis of the Colony Cove Mobile Estates Rent Increase Application.

<sup>6</sup> Ibid., page 11 and Exhibit Y to the City of Carson Staff Report for fiscal year 2007.

<sup>7</sup> Resolution No. 2008-256, A Resolution of the Carson Mobilehome Park Rental Review Board Granting a General Rent Increase for Colony Cove Mobile Estates, dated August 6, 2008, Exhibit A.

the Mobilehome Park, there was historically a zero percent vacancy rate at this and at comparable mobile home parks.<sup>8</sup> Therefore, no amount is provided to reduce the increased rents for vacancies.

### **Period of Damages**

The increased rents actually awarded to Colony Cove related to the application for the rent increase for the year ended March 31, 2007, commenced December 1, 2008.<sup>9</sup> This is the date for the commencement of the damages period. The trial in this matter is scheduled to commence April 5, 2016, and is expected to end by the end of that week, or on or about April 8, 2016.

If Colony Cove prevails at trial, then Colony Cove will submit another application for a rent increase on or before June 30, 2016, which would result in the increase becoming effective approximately February 1, 2017.<sup>10</sup> Therefore, the damage period will end as of January 1, 2017 (representing the last rent payment due date for the month of January 2017 before the rent increase can take effect for February 2017). The damages period is a little over eight years, and the total damages amount prior to applying a present value discount is \$6,390,919 (\$65,213.46 per month for 98 months).

### **Discount Rate**

The economic damages as of the commencement of the damages period of December 1, 2008, through the end of the damages period of January 1, 2017, need to be discounted back to the start of the damages period to account for the time value of money. The appropriate discount rate to reflect that value would be equal to the risk of not collecting the rents. Based upon the fact that rents are well below market rents in the rent-controlled Mobilehome Park, and historically there has been effectively a zero percent vacancy rate, a risk free discount rate would be appropriate.

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<sup>8</sup> Appraisal report of Rob A. Detling as of March 30, 2006, page 29.

<sup>9</sup> This is based upon the date that the rent increase actually awarded was permitted to be effective (90 days after notice was given by the Carson Mobilehome Park Rental Review Board.

<sup>10</sup> This is based upon interpretation by counsel of documents identified in Section IV of this report, item numbers 18 – 21, that provide rules, regulations and time periods to process an application to increase rents and have the rent increase approved.



A risk-free discount rate in these particular circumstances would be the rate on a 10-year U.S. treasury note as of December 1, 2008. That rate is 2.72%.<sup>11</sup> Discounting the \$6,390,919 in damages to the start of the damages period using a 2.72% discount rate results in damages of \$5,738,050. See Exhibit A to this report for the calculation of the damages amount. The present valuing creates a discount of \$652,869.

### **Prejudgment Interest**

I have also been asked to calculate an appropriate prejudgment interest rate and then apply that rate to the economic damages to calculate prejudgment interest damages. The prejudgment interest rate I have calculated is based upon the concept of a reasonably prudent person investing funds in a diverse group of securities (including U.S. treasury bills) to produce a reasonable return while maintaining safety of principal.<sup>12</sup> The investments I have chosen to fit these criteria are three types of securities. I have equally weighted the rates of returns of these securities to calculate a weighted average return for the prejudgment interest rate. The securities I utilized are listed below along with a calculation of the weighted average rate of return.

1. 10-year U.S. treasury bill as of December 1, 2008
2. AAA rated corporate bond rate as of December 1, 2008<sup>13</sup>
3. S&P 500 index average rate of return from December 1, 2008 to present<sup>14</sup>

#### Weighted Average Rate of Return for the Prejudgment Interest Rate

U.S. treasury bills	2.72%
AAA rated bonds	5.35%
S&P 500 index fund	<u>15.34%</u>
Total	23.41% divided by 3 = <u>7.80%</u> Prejudgment Interest Rate

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<sup>11</sup> <https://research.st.louisfed.org/fred2/series/DGS10>

<sup>12</sup> 285 F.3d 784 United States Court of Appeals, Ninth Circuit. Louis Schneider v. County of San Diego

<sup>13</sup> <https://research.stlouisfed.org/fred2/series/Daaa/downloaddata>

<sup>14</sup> <http://finance.yahoo.com/q/hp?s=SPY+Historical+Prices>

In the scenario above, one-third of the funds would be invested in a 10-year U.S. treasury bill as of December 1, 2008, that had a 2.72% interest rate. One-third of the funds would be invested in AAA corporate bonds, which had an average rate of return of 5.35% as of December 1, 2008. This investment would have a high degree of safety of principal because this type of bond has the highest possible rating from credit rating agencies, meaning the companies issuing these bonds demonstrate an exceptional degree of creditworthiness in meeting their financial commitments. The last one-third of the funds would be invested in an exchange-traded fund that provides investment results, before fund expenses, equal to the performance of the Standard & Poor's 500 Index. This is a highly diversified equity investment due to the large number of companies included in the index. In addition to the diversity of companies in this investment, the duration of this investment being over eight years would contribute to the high degree of safety of principal.

The prejudgment interest rate calculation is shown in more detail on Exhibit B to this report. The amount of prejudgment interest damages is \$4,229,607 and the calculation of this amount is shown on Exhibit A to this report.

#### **Total Damages**

Value of lost rent increases as of 12/1/08	\$5,738,050
Prejudgment interest	<u>4,229,607</u>
Total damages	<u>\$9,967,657</u>

#### **Reasonableness of Damages**

I have considered the increase in rent of \$161.82 per month per space that I calculated in relation to other economic considerations during this time frame. The average monthly per space rent in the Mobilehome Park was approximately \$408.<sup>15</sup> The monthly increase approved by Defendants was \$36.74, for a new total average of \$444.74 per month. The lost rent damages of \$161.82 per month represents an increase of 36.4%, to a total monthly rent of \$606.56.

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<sup>15</sup> Appraisal report of Rob A. Detling as of March 30, 2006, page 45.

The market value of the average monthly rent per space at the Mobilehome Park was \$800<sup>16</sup> when it was purchased by Colony Cove. The \$606.56 hypothetical rent is still 24% below market value rents.

The \$408 actual monthly rent for the fiscal 2007 year is “approximately \$150 below the rents at the most comparable mobile home park in Carson (Carson Harbor Village) and well below the rent levels at other mobile home parks that are not subject to rent control...”<sup>17</sup> The average per month space rental at Carson Harbor Village for rent controlled spaces was \$560 at that time, and for the eleven spaces at this mobile home park that are not rent controlled, the monthly rentals ranged from \$780 - \$880 per month.<sup>18</sup>

In its first five years of operations, 2007 through 2011, Colony Cove lost almost \$4 million.<sup>19</sup> This represents a substantial negative return on the equity invested into Colony Cove.

#### **IV. DOCUMENTS AND OTHER INFORMATION CONSIDERED**

The significant documents and other information I considered includes:

1. First Amended Complaint
2. Order Granting in Part and Denying in Part Defendants’ Motion to Dismiss dated December 18, 2014
3. Order Granting in Part and Denying in Part Defendants’ Motion to Dismiss dated June 23, 2015
4. Application for Mobilehome Space Rent Increase for the period April 1, 2006 through March 31, 2007
5. Application for Mobilehome Space Rent Increase for the period April 1, 2007 through March 31, 2008

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<sup>16</sup> Appraisal report of Rob A. Detling as of March 30, 2006, page 45.

<sup>17</sup> Ibid., page 50.

<sup>18</sup> Ibid., page 45.

<sup>19</sup> First Amended Complaint, page 1, lines 20 – 23.

6. Report of John P. Neet, MAI dated September 25, 2007
7. Appraisal report for Colony Cove MHP as of March 30, 2006 prepared by Rob A. Detling
8. Analysis of the Colony Cove Mobile Estates Rent Increase Application by Kenneth K. Baar, Ph.D (February 2008)
9. Analysis of the Colony Cove Mobile Estates Rent Increase Application by Kenneth K. Baar, Ph.D (June 2009)
10. Memorandum to the Carson Mobilehome Park Rental Review Board from Michael St. John, Ph.D. dated May 27, 2008
11. City of Carson Staff Report to the Mobilehome Park Rental Review Board dated February 13, 2008
12. City of Carson Staff Report to the Mobilehome Park Rental Review Board dated June 10, 2009
13. Resolution No. 2008-256, A Resolution of the Carson Mobilehome Park Rental Review Board Granting a General Rent Increase for Colony Cove Mobile Estates
14. Resolution No. 2009-269, A Resolution of the Carson Mobilehome Park Rental Review Board Granting a General Rent Increase for Colony Cove Mobile Estates
15. 612 F.2d 459 United States Court of Appeals, Ninth Circuit, U.S. v 429.59 Acres of Land
16. 285 F.3d 784 United States Court of Appeals, Ninth Circuit, Louis Schneider v. County of San Diego and Reybro, Inc.
17. Transcript of Public Meeting at Carson Planning Commission held on June 11, 2008
18. Resolution No. 98-010, a Resolution of the City Council of the City of Carson adopting Revised Guidelines for the Implementation of the Mobilehome Space Rent Control Ordinance, Chapter 7, Article IV, of the Carson Municipal Code and Replacing the Policy Guideline for Capital Improvement Rent Increases

19. <http://www.codepublishing.com/CA/Carson/html/Carson04/Carson040700.html>  
(Chapter 7 Mobilehome Space Rent Control)
20. City of Carson letter dated August 11, 2008 to the residents of the Mobilehome Park regarding a \$36.74 general rent increase per space per month
21. California Code of Civil Procedure paragraph 1094.6 Judicial review; decisions of local agencies; petition; filing; time; record; decision and party defined; ordinance or resolution
22. Exhibit Y to the City of Caron Staff Report for fiscal 2007.
23. Explanation of Staff Corrections and/or Additions/(Reduction) to the Applicant's General Operating Income and Expense Sheets
24. Letter to the Staff of the Mobilehome Rent Review Board of the City of Carson from Gilchrist & Rutter dated September 28, 2007
25. Scheduling Order dated April 14, 2015

**V. QUALIFICATIONS OF PETER A. SALOMON, CPA, CFF**

I am the Managing Partner of Salomon Forensics, LLP, a certified public accounting firm specializing in performing litigation and forensic consulting services. I am a Certified Public Accountant in California and New York with over thirty-five years of professional accounting experience. I have specialized in forensic accounting for more than twenty-five years. Before specializing in forensic accounting, I worked for nine years auditing financial statements for two of the "Big 4" public accounting firms.

I have provided expert testimony in Federal Courts, State Courts and arbitrations regarding the calculation of economic damages. I have been retained on five occasions as an accounting referee or special master by Superior Courts in California. I was retained by the United States Securities and Exchange Commission ("SEC") as an expert witness. I have also assisted a

variety of public companies, audit committees and individuals under investigation by the SEC and others by performing independent and other specialized accounting investigations. I have made presentations to the SEC and the United States Department of Justice on the findings of several of these investigations.

I am the most recent former Chair of the Forensic Services Section of the California Society of Certified Public Accountants and a former Chair of its Fraud Section. A copy of my curriculum vitae is attached as Exhibit C to this report.

## **VI. PRIOR EXPERT TESTIMONY AND PUBLICATIONS WRITTEN**

A list of all cases in which I have testified as an expert at trial or in deposition within the preceding four years is attached as Exhibit D to this report. Articles I have written that were published within the preceding ten years are listed in Exhibit E to this report.

## **VII. COMPENSATION**

The compensation paid to Salomon Forensics for work performed by me and other professionals working at my direction is based upon hourly billing rates ranging from \$180 to \$495. In addition to professional fees, Salomon Forensics is reimbursed at cost for out-of-pocket expenses. Salomon Forensics has incurred fees of approximately \$16,000 through the date of this report.

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This report presents my opinions. The opinions in this report are subject to modification based upon additional facts or information that may become available. I may amend this report based upon testimony or evidence presented at trial. This report is prepared and issued solely for use in the above-cited matter.



Executed on January 11, 2016, in Hermosa Beach, California.

A handwritten signature in blue ink that reads "Peter Salomon". The signature is written in a cursive style with a large initial "P".

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Peter A. Salomon, CPA, CFF

# **EXHIBIT 11**

**CITY OF CARSON  
STAFF REPORT TO  
MOBILEHOME PARK RENTAL REVIEW BOARD**

**Public Hearing:** February 13, 2008

**Application:** Request for a General Rent Increase

**Mobilehome Park:** Colony Cove Mobile Estates  
17700 S. Avalon Blvd.  
Carson, CA 90746

**Owner:** Colony Cove Properties, LLC  
Goldstein Properties, Inc.  
Mr. James Goldstein, Owner  
2029 Century Park East, Ste. 1450  
Los Angeles, CA 90067

**Owner's Representative:** James & Associates, Inc.  
Ms. Anne James, Owner  
255 N. El Cielo, Ste. 140 #286  
Palm Springs, CA 92262

**Owner's Attorney:** Thomas W. Casparian, Esq.  
Gilchrist & Rutter  
1299 Ocean Avenue, Ste. 900  
Santa Monica, CA 90401

**Request:** The park owner proposes a general rent increase for 403 of the 404 rental spaces in the park, in an amount of \$618.05 per space, per month, or a range increase of from 136.26% to 178.61%. It is proposed to increase the monthly space rents in the mobilehome park from the current range of from \$346.03 to \$453.58 per space, per month up to \$964.08 to \$1,071.63 per space, per month. This would also increase the current average monthly rent from \$414.25 per space to \$1,032.30 per space and increase the park's yearly income by \$2,988,889.80.

**Staff Recommendation:** It is staff's recommendation that the Board consider granting a general rent increase for 403 of the 404 spaces in the park at this time for the owners of Colony Cove Mobile Estates in the amount of \$15.65 or (3.45% to 4.52%) per space, per month. This would bring the rent range in the park up to \$361.68 to \$469.23 per space, per month, increase the average park rent to \$429.90 and increase the yearly park income by \$75,683.40.

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#### **SECRETARY'S REPORT**

On Monday, January 28, 2008, staff mailed public hearing notices to the Mobilehome Park Rental Review Board, the park owner, the owner's representative, the owner's attorney, and all affected residents in the park. On Wednesday, February 6, 2006, staff transmitted copies of the Agenda Face Sheet to the City Clerk's Office for public posting. The Staff Report to the Board was finalized and mailed or hand delivered to the Mobilehome Park Rental Review Board, the park owner, the park owner's representative, the park owner's attorney, the resident's representative and made available to the general public not later than Thursday, February 7, 2008.

#### **NOTIFICATION AND COMMENT LETTERS**

Staff received the general rent increase application and filing fee from Colony Cove Mobile Estates on October 1, 2007. The application is shown as Exhibit-A along with a Fair Return Analysis which is shown as Exhibit-B to this staff report. The application was reviewed and deemed incomplete by fax on October 23, 2007 and November 1, 2007. After receipt of additional information from the park dated October 23, 2007, and November 5, 2007, the application was deemed substantially complete on December 11, 2007. Some additional information was received from the park on January 4, 2008, substantiating earlier discussions on expenses with park representatives.

The Housing and Neighborhood Development Division mailed each resident a letter, dated October 11, 2007, announcing that an application had been filed with the department. Subsequently, the Housing and Neighborhood Development Division mailed each resident a letter, dated December 11, 2007, announcing that the application had been deemed substantially complete and that it was available for public inspection in the Housing Division Offices. The letter further stated that an appointed or approved resident representative could obtain a copy of the application request to assist the mobilehome park residents in submitting factual information to the Board. Finally, the letter stated that residents could submit letters, bills, photographs, and/or other relevant material to the City by Thursday, January 11, 2008, at 6:00 p. m., for inclusion in the staff report to the Board. As of Monday, January 14, 2008, the Housing and Neighborhood Development Division received approximately 36 letters from residents regarding the proposed rent increase request. These 36-pages of letters are included in Exhibit-C of this staff report.

#### **BACKGROUND**

Colony Cove Mobile Estates is located at 17700 South Avalon Boulevard in a district zoned RM-8-D (Residential, Multiple Dwelling-8 units per acre-Design Overlay Review). The park has 404 spaces, which are presently occupied by one (1) triple-wide, 347 double-wide, and 56 single-wide mobilehomes.

Park amenities include a large central clubhouse style building with a kitchen, banquet room/auditorium, swimming pool, Jacuzzi, billiard/card room, library/television room, exercise room, indoor spa, and other facilities. A laundry room with coin-operated washers and dryers is also provided.

A recreational vehicle storage area is available and the residents may rent spaces at an additional cost. A pet exercise run is provided for residents' use. The park has a pay cable television service for commercial and pay television channels, which is provided at extra cost to the residents. Park management will provide individual antennas to residents as a service provided within the rent structure. Gated security services are provided on a 24-hour basis, and residents pay a fee of \$48.00, per person, per year to partially offset this security cost. Water, sewer, and trash collection services are provided for the residents within the base rent.

**OWNER'S REQUEST AND STATEMENT**

In the current rent increase application, the park owner's state, in part, that it is necessary to request a general rent increase at this time because:

1. In order to provide the park owner with a fair return on investment, as mandated by the United States Constitution, the California Constitution and the City of Carson rent control ordinance and regulations, a rent increase of \$618.05, or an average of 152.93%, is required.
2. Colony Cove lost \$1,102,773 from 2005 to the 2006-2007 fiscal year, as compared to an adjusted profit of more than \$1,102,773 in 2005. In order to maintain the base year (2005) gross profit for the 2006-2007 fiscal year, a 96% rent increase is required.

**STAFF COMMENTS ON THE OWNER'S GENERAL RENT INCREASE APPLICATION AND SUPPLEMENTAL TO THE APPLICATION**

1. The owner has claimed operating expenses above and beyond those that staff has allowed in this staff report. Staff's summary of the explanations for the disallowed items is contained in Exhibit-E (pages E-16 to E-19) of this staff report. The residents have also disputed some of the operating expenses and other claims that have been made by the owner. Their comments are contained in the comment letters and other documentation which are attached as Exhibit-C (pages C-1 to C-36) of this staff report. The Mobilehome Park Rental Review Board may wish to review these expenses and their reasonableness and take whatever action (inclusion or exclusion) which it deems to be appropriate.
2. There may be circumstances where a case can be made by an owner, which would require the Board to take into account different analysis methods, and/or information which has historically been considered irrelevant by both staff and the Board. The Carson Municipal Code, Article IV, Chapter 7, Subsection 4704 (g) reads, in part, as follows: "The Board shall consider the following factors, in addition to any other factors it considers relevant, in making such determination."

In this case, the Mobilehome Space Rent Control Ordinance allows an owner to present any and all information believed to be relevant to a rent increase proposal even though a particular item may not be specifically listed as one of the Eleven Factors in the Ordinance. Past court rulings and case law decisions have outlined various issues and arguments which are allowable as evidence to help demonstrate that a particular park owner or park is being treated unfairly by an ordinance and/or Board.

The owner has attempted to use this provision in the application process and has submitted supplemental information in support of his arguments. However, staff's analysis has found that most of these arguments were inaccurate, irrelevant and/or lacking sufficient documentation to be of any merit and were therefore disregarded from further consideration in the preparation of this report. As an example, some of the issues brought forward by the owner included the following:

- A. Numerous sections and pages of the owner's current General Rent Increase Application Summary and Supplement to the Application contain references to the year 1978, 1979 and/or other base years. As the Board is aware, each application has historically been reviewed and evaluated only for the period of time since the park's last public hearing. This fact has been discussed at numerous public hearings, including past hearings for the owner's other park, Carson Harbor Village Mobilehome Park. In addition, the current revised guidelines for the implementation of the Ordinance specifically address this issue and preclude the Board from reconsidering past actions, as noted in: Section V, Miscellaneous, Subsection B, page 8.

All calculations and statements which have references to 1978, 1979 or any other base years that are not applicable as a base line year, and are not to be considered by the Board in its formulation of a decision for the current general rent increase request. Additionally, the owner didn't even own the park in 1978 or 1979; nor did he own it during the 2004 and 2005 expense years previously reviewed by the Board for

that matter. Therefore, these alternate base years were not used by staff in any way to establish staff's recommendation. Also, as a result of litigation against the Board and City, prior court decisions have rejected this same claim by the current park owner involving his other park, Carson Harbor Village Mobilehome Park.

- B. It is also noted that the owner provided an analysis under Factor No. 2 in its Supplemental Application material, which, in part, requests the Board to consider a comparison of Colony Cove Mobile Estates with parks outside of the City of Carson, specifically Del Amo Mobile Estates and Dominguez Hills Estates.

Based on Section III, Subsection (A), of the Revised Guidelines for Implementation of the Mobilehome Space Rent Control Ordinance, as adopted by the City Council on February 17, 1998, the owner's desired comparison with other mobilehome parks is not valid. Section III, Subsection (A), is stated as follows:

III. Comparable Parks and Changes in Services, Maintenance and Amenities.

"A. Comparable Parks. The Ordinance directs the Board to consider rents in comparable parks in the City. Consideration of the rents for spaces in comparable mobilehome parks can assist the Board in determining the range of reasonable rents for a particular park. The reason the Ordinance specifies parks in the City is that comparison to rents in parks outside the City which are not subject to rent control would promote the excessive upward pressure on rents that the Ordinance is designed to avoid. Rents in unregulated markets are the result of unequal bargaining power, which arises from the shortage of spaces for relocating homes and the cost and difficulties inherent in trying to relocate a home. The Ordinance is designed to prevent the excessive rents that can occur in such a market absent regulation. Even if evidence were submitted showing a park in a neighboring jurisdiction with rent control to be comparable in quality, amenities, services and location, evidence would be required concerning the nature of the rent control regulations in effect in that jurisdiction during the period from 1979 to the present before the Board could determine whether the park was comparable within the meaning of the Ordinance. Parks subject to the Los Angeles County mobilehome rent regulation ordinance have not been subject to rent regulation at all times since the adoption of the Carson Ordinance and were not and are not now subject to similar regulation. Therefore, rents in spaces in parks in incorporated areas of Los Angeles County are not comparable within the meaning of the Ordinance. Newly constructed spaces, as defined by the Mobilehome Residency Law, are also not comparable spaces within the meaning of the Ordinance even when they are located in the City because the rents for those spaces are exempt from rent control and have never been subject to rent regulation."

Again, as a result of litigation against the Board and City, prior court decisions have rejected the claim by this owner regarding his other park, Carson Harbor Village Mobilehome Park, that these allegedly similar parks outside the city are comparable. Also, the Board has previously rejected the claim that the newly constructed spaces within Carson Harbor Village Mobilehome Park are "comparable" within the meaning of the Ordinance.

- C. The park owner provided their own Maintenance of Net Operating Income (MNOI) analysis that is noted as Factor No. 13 and is shown in Exhibit-A (pages A-4 & A-25). However, this analysis (as discussed in detail in the section below) is preliminary to staff's review of the park's income and operating expenses.

Additionally, the CPI multiplier utilized in the park owner's calculation are in excess of the actual CPI amount utilized by both staff and Dr. Baar in their analyses. Finally, the park owner's calculation utilizes only 100% of the CPI, when arguably a lesser amount such as 75% and or 50% of the CPI increase may be adequate under the particular circumstances of a given application and hearing. Because of these previously stated issues, staff's own analysis shows the park owner's analysis to be more than double our calculations and the attached report of Dr. Baar will address this particular analysis in much more detail.

3. Within the general rent increase application materials in the Summary of Rent Increase Factors Exhibit-A (page A-3), the owner makes the following statement, which it labels "Factor 12":

"On September 27, 2006, the Board concluded that Colony Cove Mobile Estates' gross profit should be \$748,368.28. That calculation was based upon the Consumer Price Index as of December 31, 2005.



Since that time the Consumer Price Index has increased 6.67%. In order to maintain the same profit in constant dollars the \$748,368.28 must be increased by 7.17% to \$798,284.44. The April 1, 2006 - March 21, 2007 Colony Cove loss was (\$1,082,191). There has been a profit reduction of \$1,880,475.44. That deficiency requires a 96.22% rent increase on the lower adjusted rents or \$388.85 per space."

It must be pointed out that the owner's statement above contains a number of errors of fact and conclusion. The owner makes a reference to a section of the staff report prepared for the park's most recent general rent increase hearing. That particular section; indeed, the entire staff report; is an analysis and recommendation prepared for the Board by staff, not a finding or conclusion of the Board.

The Board's findings and conclusions are contained within Resolution No. 2006-244, which the Board adopted at the conclusion of that September 27, 2006, public hearing and is included in this staff report as Exhibit E (pages E-1 to E-10). The figure of \$748,368.28 is drawn from an estimated gross profit-based analysis contained in the September 27, 2006, staff report, and is a combination of the parks "Actual Gross Profit for 2005" as adjusted by staff in each report to the Board and the yearly sum of the Board's last approved increase in 2006. The Board did not specifically cite that the amount of \$748,368.28 was the new target amount for the following year(s) within their findings, as noted in Resolution 2006-244. There is no implication in those findings of the establishment or entitlement to a level of gross profit maintenance or amount towards a fair return on investment for the park. Rather, that the slight decrease in park expenses and the modest increase in the CPI had been covered by the small increase in income granted by the Board based on the all the factors in the Ordinance, the Implementation Guidelines and taking into account resident testimony at the public hearing.

Additionally, the references in the owner's statement above to the Consumer Price Index, as it is used in the gross profit analysis process, are incorrect. As is explained in the preface to the Estimated Gross Profit Maintenance Analysis section of each staff report, the purpose of that analysis is to help determine the effects that inflation may have had on the park's gross profit through the end of the expense year(s) being reviewed.

The expense period reviewed in the gross profit analysis within the September 27, 2006, staff report ended with December 2005. The expense period reviewed in the gross profits analyses in the current staff report ends with March, 2007. Thus, the relevant measuring points for determining the effect of inflation on the park's gross profit for the 2006-2007 expense year in this instance are December 2005, through March 2007. The Consumer Price index figures for those points in time are 602.3 (December 2005) and 639.6 (March 2007). The increase between December 2005 and March 2007 is 6.19%. The 6.67% Consumer Price Index increase asserted by the owner appears to be from some other lengthened time period that is irrelevant to this particular analysis.

Further, the owner's assertion that the park's 2006-2007 year profit was actually a loss of \$1,082,191 and that there has been a reduction in income of \$1,880,475, while based on information the owner provided in support of its rent increase request, is preliminary to staff's review of gross income and operating expenses.

Following staff's review of the application and supporting documentation, which resulted in adjustments to gross income and operating expenses as detailed in Exhibit E (pages E-16 to E-19), (Explanation of Staff Corrections and/or Additions/Reductions to the Owner's General Operating Income and Expense Sheets), staff asserts that the park's gross income, operating expenses, and gross profit is as indicated later in this staff report in Table No. 2, Gross Income and Operating Expenses, which is on page 7 of this staff report to the Board.

Also, the gross profit maintenance analysis is merely a tool to aid the Board in making its decision. The use of a gross profit maintenance analysis does not create any entitlement, and evidence concerning all of the factors must be considered and balanced in determining whether to grant a rent increase and the amount of any such increase. This is clearly stated on page 5 of the Guidelines for the Implementation of the Ordinance at II, B, Gross Profit Maintenance Analysis.

**TABLE No. 1 (OWNER'S PROPOSED RENT INCREASE)**

The Board last reviewed an application for a general rent increase for Colony Cove Mobile Estates at its September 27, 2006 meeting. At that public hearing, the park owner was granted a general rent increase of \$6.23 per space, per month, or a range of from 1.39% to 1.83%, for 403 of the 404 rental spaces in the park. This rent increase provided additional income of \$30,128.28 on a yearly basis to the park. The full effect of this increase was realized in the 2007 income and expense year for Colony Cove Mobile Estates which was only partially submitted with this application. A copy of the Resolution No. 2006-244, approving the above action by the Board is included in Exhibit-E (pages E-1 to E-10) of this staff report.

At this time, the park owner has proposed a general rent increase of \$618.05 per space, per month, or a range of from 136.26% to 178.61% for 403 of the 404 rental spaces in the park, as presented in the following table:

<u>Spaces per Rent Level</u>		<u>Current General Base Rent</u>	+	<u>Requested General Rent Increase</u>	=	<u>New Requested Base Rent</u>	<u>% Increase</u>
1	Sp.	\$346.03	+	\$618.05	=	\$964.08	178.61%
1	Sp.	\$357.76	+	\$618.05	=	\$975.81	172.76%
1	Sp.	\$363.23	+	\$618.05	=	\$981.28	170.15%
6	Sp.	\$379.88	+	\$618.05	=	\$997.93	162.70%
21	Sp.	\$387.24	+	\$618.05	=	\$1,005.29	159.60%
1	Sp.	\$389.69	+	\$618.05	=	\$1,007.74	158.60%
71	Sp.	\$394.62	+	\$618.05	=	\$1,012.67	156.62%
34	Sp.	\$401.98	+	\$618.05	=	\$1,020.03	153.75%
42	Sp.	\$409.36	+	\$618.05	=	\$1,027.41	150.98%
52	Sp.	\$416.72	+	\$618.05	=	\$1,034.77	148.31%
86	Sp.	\$424.10	+	\$618.05	=	\$1,042.15	145.73%
29	Sp.	\$431.47	+	\$618.05	=	\$1,049.52	143.24%
51	Sp.	\$438.85	+	\$618.05	=	\$1,056.90	140.83%
2	Sp.	\$446.21	+	\$618.05	=	\$1,064.26	138.51%
5	Sp.	\$453.58	+	\$618.05	=	\$1,071.63	136.26%
1	Sp.	\$0.00	+	\$0.00	=	\$0.00	0.00%
404	Sp.	\$2,003,313.96	+	\$2,988,889.80	=	\$4,992,203.76	

If the mobilehome park were 100.0% full for a one (1) year period, the total income for Colony Cove Mobile Estates as collected from current base rents would be \$2,003,313.96 per year. In this case, the proposed general rent increase is equal to \$2,988,889.80 in additional rental income on a yearly basis.

Therefore, if the mobilehome park were operating at 100.0% capacity for a one-year period (403 spaces paying rent), the projected rental income (without other sources of income included) would be:

<u>Current Rental Income on A Yearly Basis</u>	+	<u>Proposed Rental Increase On a Yearly Basis Based On Owner's Request</u>	=	<u>New Rental Income on A Yearly Basis</u>
\$ 2,003,313.96		\$ 2,988,889.80		\$ 4,992,203.76

**TABLE No. 2 (GROSS INCOME AND OPERATING EXPENSES)**

As previously mentioned, the Board last granted a general rent increase to the park owner at its most recent review of the park's income and expenses on September 27, 2006. At that time, the park owner submitted income and operating expense documentation for 2004 through 2005 that was compared and evaluated against documentation for 2004.

At this time, the park owner is providing income and expense documentation for April 2006 through March 2007, which will be compared with information from 2005. The 2005 information was obtained from the park's last general rent increase application file.

Facts: The annual changes in gross income, operating expenses, and gross profit for 2005 through the 2006-2007 expense period, are shown as follows:

	<u>2005</u>	<u>2006-07</u>	<u>\$ Change</u>
Gross Income	\$ 2,038,703	\$ 2,005,262	(-) \$ 33,441
(-) Operating Expenses	- 1,320,463	- 2,198,172	(+) \$ 877,709
Gross Profit	\$ 718,240	(\$ 192,910)	(-) \$ 911,150

Findings: Gross Income for Colony Cove Mobile Estates decreased by \$33,441 or 1.7%, between 2005 and the 2006-07 expense year.

Operating expenses increased by \$877,709 or 66.5%, between 2005 and the 2006-07 expense year.

As a result of the trends in gross income and operating expenses described above, gross profit for the park decreased by \$911,150 or 126.9% between 2005 and the 2006-07 expense year.

**TABLE No. 3 (ANALYSIS OF FACTORS No. 1 THROUGH 11)**

Pursuant to Chapter 7 of Article IV of the Carson Municipal Code, otherwise cited as the "Mobilehome Space Rent Control Ordinance", the Board shall consider the following eleven (11) factors in addition to any other factors it considers relevant in making a determination on a rental increase request. Section 4704 (g) reads, in part, as follows:

**FACTOR No. 1, "Changes in the Consumer Price Index for all urban consumers in the Los Angeles-Riverside-Orange County Metropolitan Area published by the Bureau of Labor Statistics."**

Facts: In this case, staff has utilized the August, 2006 Consumer Price Index figure for all urban consumers in the Los Angeles-Riverside-Orange County metropolitan area for calculating the percent change in the CPI since the park's last general rent increase application. The CPI at that time, the time of the last hearing before the Board (on a 1967 = 100 base) was 626.1.

The most recent CPI figure available as of the writing of this report is for December, 2007. This CPI is listed as 648.1 on a 1967 = 100 base, as provided by the U. S. Bureau of Labor Statistics.

Findings: The per cent change in the CPI is calculated as follows:

CPI (December, 2007)	=	648.1
CPI (August, 2006)	=	-626.1
CPI (Point Change)	=	22.0

Therefore:

$$\frac{22.0 \text{ (CPI point change)}}{626.1 \text{ (CPI, August, 2006)}} \times 100 = 3.51 \% \text{ (Percent change in the CPI)}$$

**FACTOR No. 2, "The rent lawfully charged for comparable mobilehome spaces in the City of Carson."**

Facts: Staff finds that Colony Cove Mobile Estates is comparable to two (2) mobilehome parks in the City in terms of rental space size and amenities provided, as follows:

<b>Name &amp; Date of Park Construction</b>	<b>No. of Units</b>	<b>Park Amenities</b>	<b>Current General Base Rents/Month</b>	<b>Current Capital Improvement/ Month</b>
Colony Cove Mobile Estates 17700 S. Avalon Blvd. Carson, CA 90746 (1995)	404	Recreation building and banquet room/ auditorium, billiards/game room, lounge/card room, library/TV room, laundry w/coin washers & dryers, office/lobby, exercise room, indoor spa and saunas, swimming pool, outdoor clothes drying area, car wash area, pet run area, RV storage area and manned entry gate.  Water, sewer, & trash collection services are included in the monthly rent. A separate fee of \$48.00 per person per year is paid for security.	\$346.03 to \$453.58  The last general rent increase was for \$6.23 per space per month, or a range of from 1.39% to 1.83%.  It was approved by the Board on 09-27-06.	\$2.48 per space, per month, for a period of 60 months, or until 12-31-06, for clubhouse, Jacuzzi, walls, landscaping, etc. (approved 10-01-01).  \$13.76 per space, per month, for a period of 60 months, or until 05-31-12, clubhouse, furniture & fixtures, etc. (approved 02-07-07) through Reso. No. 2007-245.

**COMPARABLE PARKS:**

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Carson Harbor Village MHP 17701 S. Avalon Blvd. Carson, CA 90745 (1978)	420	Recreation building w/kitchen & banquet room/auditorium, billiards/game room, lounge/card room, library/TV room, laundry w/coin washers & dryers, office/lobby, exercise/crafts room, indoor spa & saunas, swimming pool, outdoor clothes drying area, three automated security gates.  Water, sewer & trash collection services are included in the monthly rent.	\$539.67 to \$578.72*  The last general rent increase was for 2.15% per space per month or a range of from \$11.36 to \$12.18.  It was approved by the Board on 11-28-07.	\$15.95 per space, per month, through March 31, 2008 and a final one month payment in April 2008 of \$6.74. Originally approved by the MRRB on July 23, 2003, through Reso. No. 2003-221 and later amended by court order and the Board on May 25, 2005 through Reso. No. 2005-236  \$22.43 per space, per month for 4 years though April 30, 2012, for portions of the perimeter wall and renovations to the clubhouse, pool, spa, & park streets. Approved by the Board on January 23, 2008 through Reso. No. 2008-255.
Imperial Avalon Mobile Estates 21207 S. Avalon Blvd. Carson, CA 90746	225	Recreation building w/kitchen, card room, billiard room, laundry w/coin washers & dryers, lounge, office, swimming pool, jacuzzi, car wash & storage area.  Sewer & security services are included in the monthly rent.	\$284.11 to \$337.54  The last general rent adjustment was for \$9.68 or a range of from 2.95% to 3.53%.  It was approved by the Board on 09-26-07.	\$28.66 per space, per month for 10 years through December 31, 2017, for 3 storm drains, streets, culverts, clubhouse air, major leak repair to the fire hydrant line. Approved by the Board on September 26, 2007 through Reso. No. 2007-249.

\*The owner of Carson Harbor Village constructed 11 new spaces in 1995, which are exempt from the City's rent control ordinance. These space rents are not considered to be comparable because they are on non-rent controlled spaces. Therefore, they are excluded from this comparison.

**Findings:** In this case, staff compared Colony Cove Mobile Estates with the two other mobilehome parks which have the most comparable rental spaces and similar amenities. It is acknowledged that these three parks are not exactly the same. However, they are the most comparable of the parks in the City of Carson. Each park provides sewer and trash collection services within the rent structure.

Carson Harbor Village provides three automated security gates within the monthly rent structure while Colony Cove charges a separate fee of \$48.00 per person, per year, in connection with its manned 24-hour gated security. This fee pays for a portion of the total cost of security services.

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Imperial Avalon has no security gate, no indoor sauna, and is approximately half the overall size of the other two comparison parks. However, as noted above, the rental space size and most of the other amenities are fairly comparable to Colony Cove, although are arguably inferior overall.

The following list compares each of the three parks by presenting the variations in the current rent structures. The rent structures are ranked from 1 through 3, with number 1 being the highest average monthly rent.

		<u>Base Rent Range</u>	<u>Avg. Base Rent</u>
1.	Carson Harbor Village MHP *	\$539.67 to \$578.72	\$543.35
2.	Colony Cove Mobile Estates	\$346.03 to \$453.58	\$414.25
3.	Imperial Avalon Mobile Estates	\$284.11 to \$337.54	\$300.57

\*Rent controlled spaces only.

With respect to the average base rent charged at comparable mobilehome parks, the above list shows that Colony Cove Mobile Estates has an average base rent that is ranked second out of three comparable mobilehome parks.

**FACTOR No. 3, "The length of time since either the last hearing and final determination by the Board on a rent increase application or the last rent increase if no previous rent increase application has been made."**

Facts: The Mobilhome Park Rental Review Board last granted a general rent increase adjustment to Colony Cove Mobile Estates at the Board's September 27, 2006 meeting.

Findings: The total period of time from the Board's September 27, 2006 meeting to tonight's meeting is approximately 17-1/2 months, or one year, 5-1/2 months.

**FACTOR No. 4, "The completion of any Capital Improvements or rehabilitation work related to the mobilehome space or spaces specified in the rent increase application, and the cost thereof, including materials, labor, construction interest, permit fees, and other items as the Board deems appropriate."**

Facts: Staff has removed some \$266,123 in what we believe to be major rehabilitation and/or capital improvements to the park from this general rent increase application. We ask the Board to review these items shown in Exhibit-E (pages E-17 to E-19) and if there are any disagreements, to call out those items before the entire Board for discussion and a vote of whether to either be included or excluded from the general rent increase application before the Board.

Findings: Staff requests that the Board direct the park owner to apply for a capital improvement rent increase in the amount of approximately \$266,213 at their earliest convenience assuming no changes are made to the total as noted above.

**FACTOR No. 5, "Changes in property taxes or other taxes related to the subject mobilehome park."**

Facts:

	<u>2005</u>	<u>2006-07</u>	<u>\$ Change</u>
Property Taxes	\$ 172,001	\$ 188,464	(+) \$ 16,463

Findings: The change in property taxes from 2005 through 2006-07 was an increase of \$188,464 or 9.6%.

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**FACTOR No. 6, "Changes in the rent paid by the applicant for the lease of the land on which the subject mobilehome park is located."**

Facts: None.

Findings: Not applicable.

**FACTOR No. 7, "Changes in the utility charges for the subject mobilehome park paid by the applicant and the extent if any, of reimbursement from the residents."**

Facts:

	<u>2005</u>	<u>2006-07</u>	<u>\$ Change</u>
<u>Electric Costs</u>			
<u>(Common Area):</u>	\$ 16,731	\$ 21,095	(+) \$ 4,364

Findings: From 2005 through 2006-07, the park's common area electric costs increased by \$4,364 or 26.1%.

Facts:

	<u>2005</u>	<u>2006-07</u>	<u>\$ Change</u>
<u>Natural Gas</u>			
<u>(Common Area):</u>	\$ 17,847	\$ 21,098	(+) \$ 3,251

Findings: From 2005 through 2006-07, the park's common area natural gas costs increased by \$ 3,251 or 18.2%.

Facts:

	<u>2005</u>	<u>2006-07</u>	<u>\$ Change</u>
<u>Water Costs:</u>	\$ 79,850	\$ 85,091	(+) \$ 5,241
<u>(Com. Areas &amp; Pk. Res.)</u>			

Findings: From 2005 through 2006-07, the parks water costs decreased by \$ 5,241 or 6.6%.

Facts:

	<u>2005</u>	<u>2006-07</u>	<u>\$ Change</u>
<u>Trash Collections:</u>	\$ 39,426	\$ 43,571	(+) \$ 4,145

Findings: From 2005 through 2006-07, the parks trash collection costs increased by \$ 4,145 or 10.5%.

**FACTOR No. 8, "Changes in the reasonable operating and maintenance (O&M) expenses."**

For this rent application submittal, the park owner presented operating expense and income sheets for the 2006-07 expense year which will be compared with 2005 data. Expenses that have increased and/or decreased during this period are shown below. It should be noted that property taxes, electricity, natural gas, water, and trash collection costs (which have just been reviewed) are once again included in these figures for comparison purposes to show the total increases and decreases in operating expenses for the park.

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	2005 Base Year	2006-07 Current Applic.	(+,-)	2005 thru 2006-07
Accounting	\$ 39,500	\$ 0	(-)	\$ (39,500)
Insurance	\$ 50,106	\$ 39,476	(-)	\$ (10,629)
Legal	\$ 53,479	\$ 80,716	(+)	\$ 27,237
License/Fees/Dues	\$ 13,537	\$ 4,722	(-)	\$ (8,815)
Office Expenses	\$ 33,090	\$ 24,960	(-)	\$ (8,130)
Telephone	\$ 8,504	\$ 5,754	(-)	\$ (2,750)
Salaries:(on-site)	\$ 149,775	\$ 133,978	(-)	\$ (15,797)
Management Fees	\$ 99,276	\$ 81,010	(-)	\$ (18,266)
Debt Service, Int.	\$ 354,405	\$ 1,254,143	(+)	\$ 899,738
Property Taxes	\$ 172,001	\$ 188,464	(+)	\$ 16,463
Trash Collection	\$ 39,426	\$ 43,571	(+)	\$ 4,145
Water (com)	\$ 79,850	\$ 85,091	(+)	\$ 5,241
Electricity (com)	\$ 16,731	\$ 21,095	(+)	\$ 4,364
Natural Gas (com)	\$ 17,847	\$ 21,098	(+)	\$ 3,251
Com. Area Lt. Credit	\$ 19,633	\$ 19,624	(-)	\$ (9)
Electric (Maint.)	\$ 1,967	\$ 1,800	(-)	\$ (167)
Landscaping	\$ 16,983	\$ 49,677	(+)	\$ 32,694
Plumbing	\$ 4,726	\$ 5,247	(+)	\$ 521
Pool Maint./Supl.	\$ 7,070	\$ 6,777	(-)	\$ (293)
Street Maint.	\$ 0	\$ 0	(=)	\$ -
Street Sweeping	\$ 2,280	\$ 2,280	(=)	\$ -
Security	\$ 103,137	\$ 104,444	(+)	\$ 1,307
Other Maint.	\$ 37,141	\$ 24,245	(-)	\$ (12,896)
<b>Totals</b>	<b>\$ 1,320,463</b>	<b>\$ 2,198,172</b>	<b>(+)</b>	<b>\$ 877,709</b>

Findings: From 2005 through 2006-07, the park's operating expenses increased by \$ 877,709 or 66.5%.

**FACTOR No. 9, "The need for repairs caused by circumstances other than ordinary wear and tear."**

Facts: None.

Findings: Not applicable.

**FACTOR No. 10, "The amount and quality of services provided by the applicant to the affected tenant."**

Facts: The Mobilehome Park Rental Review Board is referred to Factor No. 2 of this report where staff has outlined various amenities at Colony Cove Mobile Estates and compared the park with the other mobilehome parks with comparable rental spaces and similar amenities.

Findings: On Wednesday, February 6, 2008, starting at approximately 9:30 AM, Board staff conducted an inspection of the park, and we were accompanied by one of our consulting rehabilitation inspectors, Mr. Don Knechtel and the following comments are noted:

**1. Perimeter Exterior Landscaping**

- a. West Side: The landscaping along South Avalon Boulevard consists of trees and grass. The area there appeared to be maintained in a neat manner with no significant amount of weeds or litter noted.
- b. North Side: The landscaping along East Albertoni Street consists of newly planted ground cover, shrubs and trees. Some litter was noted in the landscaping, but with the nearby fast food establishments some litter is probably unavoidable. The park has a fire exit gate near the northwest corner, but there is no paved driveway or curb cut for emergency exit purposes. (In this case, the exit would be into the parking lot of the adjacent fast food restaurant.)
- c. East Side: The landscaping along South Rainsbury Avenue consists of trees, grass, and low ground cover which appeared to be in good condition. There are two emergency gates located on the east perimeter wall of the park. Neither gate had a paved driveway or curb cut to the public street.
- d. South Side: The landscaping along East Victoria Street consists of trees and grass. The grass was cut and the area was nicely maintained. An emergency exit gate is located at the southeast corner of the park, and this gate likewise had no paved driveway or curb cut to the public street.

**2. Security Gate System**

The security system includes two lanes each for entering and exiting the park. At the time of the inspection, a security guard was present in the guard booth at the park entrance. The gates consist of wooden arms, which raise and lower to halt traffic from entering the park. Steel spikes in the roadway of the exit lanes serve to deter vehicles from entering in the wrong direction. The guard booth is staffed on a 24-hour basis. The landscaping at the entrance to the park consisted of grass and planter areas with flowers and trees.

**3. Recreation Building (Main Entrance and Exterior)**

A concrete patio area at the main entrance contained two varnished wood and wrought iron benches. Also on this patio are two newspaper vending machines. A smaller patio area at the rear of the building has a similar wood/iron bench. The recreation building has grass areas with trees and shrubs around the perimeter of building, including a large tree at the entrance. The landscaping was all well trimmed and relatively neat in appearance.

**4. Recreation Building (Central Section)**

- a. Office and Reception/Main Lobby: The manager's office is located to the right of the main entrance to the recreation building. The park manager was present at the time of the visit. Park maintenance employees were observed on duty in several places during our visit.

There is a central lobby area, which contains couches, chairs, and tables. The carpeting and the walls appeared well maintained. The office area was also neat and clean in appearance.

- b. Library/TV Room: The room contains tables, table lamps, couches, chairs, a television, and an assortment of books and magazines. The room's furnishings appeared to be in good condition and the carpet appeared to be well maintained.
- c. Restroom Facilities and Hallway Area: The men and women's rest rooms were clean and well maintained.
- d. Kitchen Facilities: The kitchen is fully equipped and it included two ovens, two four-burner cook tops, a large restaurant-style griddle, a coffee maker, a microwave oven, filtered water dispenser

and miscellaneous storage cupboards. Additionally, there were counter tops, a double sink, a dishwasher, and two new refrigerator/freezers. A fire extinguisher was on the wall. The floor was clean, and the area was maintained in very good condition.

- e. Lounge/Card Room and Hallway Area: This area contains four sets of tables and chairs. The furniture was in good condition and the room had a neat and clean appearance. In the hallway, there were a soft drink machine, a snack vending machine and several refrigerators.

5. **Recreation Building (North Wing)**

Auditorium/Meeting Room: The auditorium contained a large carpeted stage, wooden dance floor, decorated banquet tables and chairs. The carpet was clean and in good condition. The stage had a piano and flags on it. The entire room was in good condition.

6. **Recreation Building (East Wing)**

- a. Exercise Room: The room included an array of exercise equipment that all appeared to be in working order with one wall half mirrored and a TV. The carpet was clean, and the room appeared to be in good order.
- b. Indoor Spa: The indoor spa water appeared to be clean. Despite the fact that the facility is conducive to moisture, the wall tiles and ceiling were maintained in very good condition.
- c. Restroom Facilities and Hallway Area: Men and women's restroom facilities are also located in the spa area. The floor of the hallway leading to the restrooms is covered by rubber or plastic mesh matting, which was neat and clean. Each restroom contains showers, a sauna, and toilet facilities, and each was clean at the time of inspection.

7. **Recreation Building (South Wing)**

- a. Billiard/Game Room: This area contains four billiard tables, and two card tables with chairs. Additionally, there were six barstools located along the walls to observe the billiard games.
- b. Laundry Room and Outdoor Drying Yard: Posted hours for the laundry area were 8:00 AM to 9:00 PM. The laundry contains four coin-operated washers, four coin-operated dryers, and a sink area. (Plumbing outlets exist for an additional two washers.) There are three counter areas for folding clothes. The counter areas, as well as the floor, were clean. The east wall is lined with a magazine rack, above which is located a bulletin board. A fire extinguisher was also located on the wall. An enclosed outdoor area with clotheslines is provided adjacent to the laundry room.

8. **Swimming Pool/Patio Area**

The water level in the swimming pool had been lowered to facilitate the installation of railing to assist residents in and out of the pool. The patio area contained numerous tables, chairs, and lounges. There were also several wooden tables and chairs and large metal shade covers. Pool safety equipment was visible near the pool, and pool signs (hours, rules, and pool capacity) were posted. Also in the pool area for use by the residents are two gas barbecues.

9. **Streets, Curbs and Gutters**

No potholes were observed on major or secondary streets. Speed bumps and drainage gutters are located throughout the park, and these help keep vehicle speeds to a reasonable level (a 15-mph speed limit is posted throughout the park). During the inspection, staff did not observe any vehicles parked illegally on the interior streets with the exception of several contractors who were working on some mobiles.

**10. Recreational Vehicle Storage**

The recreational vehicle storage areas are located in the southeast corner and on the northerly boundary of the park. These areas are fenced and/or block walled enclosures, with lockable gates for security.

**11. Trash Enclosures**

Trash enclosures are located throughout the park. At the time of the inspection, the enclosures were generally clean and appeared to be well maintained.

**12. Recreational Building/Guest Parking**

The recreation building has a total of 38 resident and/or guest parking spaces adjacent to the facility. Additionally, there are approximately 69 guest parking spaces located next to the various former oil well sites located throughout the park.

**13. Mobilehome Spaces and Driveways**

Generally, staff noted that the individual mobilehomes, driveways and yards are well to very well maintained. Most of the mobilehome residents have very neatly trimmed landscaping and most of the mobilehomes were in good to new condition. There were a few mobilehome spaces where the unit and landscaping was not maintained as well as their neighbors, however, they were definitely in the minority of home owners.

**14. Interior Street Lighting**

The park now has an electric street lighting system, which replaced the original gas filament-illuminated system.

**FACTOR No. 11, "Any written lease lawfully entered into between the applicant and the affected residents."**

Facts: None.

Findings: Not applicable.

**ADDITIONAL ANALYSIS**

The following additional analyses are provided to assist the Board in applying the factors in the Ordinance. They show the impact of the owner's request on the park's income and the impact of the rent increases based on the increase in the consumer price index, or portions thereof, on the park's income. Additionally, analyses are included that show the effects of inflation on the gross profit of the park during the expense years under review, based on the gross profits maintenance estimate.

**OPTION NO. 1 - OWNER'S PROPOSAL**

The Board may wish to consider granting a general rent increase based on the owner's proposal, which would be for \$618.05 per space per month, or a range of from 136.26% to 178.61%. The park owner proposes to increase the monthly space rents on 403 of the 404 spaces in the park, as follows:

<u>Spaces per Rent Level</u>		<u>Current General Base Rent</u>	+	<u>Requested General Rent Increase</u>	=	<u>New Requested Base Rent</u>	<u>% Increase</u>
1	Sp.	\$346.03	+	\$618.05	=	\$964.08	178.61%
1	Sp.	\$357.76	+	\$618.05	=	\$975.81	172.76%
1	Sp.	\$363.23	+	\$618.05	=	\$981.28	170.15%
6	Sp.	\$379.88	+	\$618.05	=	\$997.93	162.70%
21	Sp.	\$387.24	+	\$618.05	=	\$1,005.29	159.60%
1	Sp.	\$389.69	+	\$618.05	=	\$1,007.74	158.60%
71	Sp.	\$394.62	+	\$618.05	=	\$1,012.67	156.62%
34	Sp.	\$401.98	+	\$618.05	=	\$1,020.03	153.75%
42	Sp.	\$409.36	+	\$618.05	=	\$1,027.41	150.98%
52	Sp.	\$416.72	+	\$618.05	=	\$1,034.77	148.31%
86	Sp.	\$424.10	+	\$618.05	=	\$1,042.15	145.73%
29	Sp.	\$431.47	+	\$618.05	=	\$1,049.52	143.24%
51	Sp.	\$438.85	+	\$618.05	=	\$1,056.90	140.83%
2	Sp.	\$446.21	+	\$618.05	=	\$1,064.26	138.51%
5	Sp.	\$453.58	+	\$618.05	=	\$1,071.63	136.26%
1	Sp.	\$0.00	+	\$0.00	=	\$0.00	0.00%
<b>404</b>	<b>Sp.</b>	<b>\$2,003,313.96</b>	<b>+</b>	<b>\$2,988,889.80</b>	<b>=</b>	<b>\$4,992,203.76</b>	

In this case, the owner's proposal of a \$618.05 monthly increase for the 403 affected spaces would equal \$2,988,889.80 in additional income on a yearly basis.

#### OPTION No. 2A - CONSUMER PRICE INDEX (100.0% METHOD)

Next, the Board may wish to consider granting a general rent increase based on all or a portion of the 3.51% CPI (100% of change between August 2006 and, December, 2007). This would amount to a proposed rent increase of from \$12.16 to \$15.94 per space, per month for the 403 rental spaces, as follows:

<u>Number of Spaces per Rent Level</u>		<u>Current General Base Rent</u>	+	<u>Proposed General Rent Increase</u>	=	<u>New Proposed Base Rent</u>	<u>% Increase</u>
1	Sp.	\$346.03	+	\$12.16	=	\$358.19	3.51%
1	Sp.	\$357.76	+	\$12.57	=	\$370.33	3.51%
1	Sp.	\$363.23	+	\$12.76	=	\$375.99	3.51%
6	Sp.	\$379.88	+	\$13.35	=	\$393.23	3.51%
21	Sp.	\$387.24	+	\$13.61	=	\$400.85	3.51%
1	Sp.	\$389.69	+	\$13.69	=	\$403.38	3.51%
71	Sp.	\$394.62	+	\$13.87	=	\$408.49	3.51%
34	Sp.	\$401.98	+	\$14.12	=	\$416.10	3.51%
42	Sp.	\$409.36	+	\$14.38	=	\$423.74	3.51%
52	Sp.	\$416.72	+	\$14.64	=	\$431.36	3.51%
86	Sp.	\$424.10	+	\$14.90	=	\$439.00	3.51%

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29	Sp.	\$431.47	+	\$15.16	=	\$446.63	3.51%
51	Sp.	\$438.85	+	\$15.42	=	\$454.27	3.51%
2	Sp.	\$446.21	+	\$15.68	=	\$461.89	3.51%
5	Sp.	\$453.58	+	\$15.94	=	\$469.52	3.51%
<u>1</u>	Sp.	<u>\$0.00</u>	+	<u>\$0.00</u>	=	<u>\$0.00</u>	0.00%
<b>404</b>	<b>Sp.</b>	<b>\$2,003,313.96</b>	<b>+</b>	<b>\$70,392.76</b>	<b>=</b>	<b>\$2,073,706.72</b>	

In this case, the proposed 3.51% CPI increase of the 403 affected base rents will be equal to an additional \$70,392.76 of rental income on a yearly basis.

**OPTION No. 2B - CONSUMER PRICE INDEX (75.0% METHOD)**

Next, the Board may wish to consider granting a general rent increase based on all or a portion of a sum equal to 75% of the 3.51 % CPI change between August, 2006 and December, 2007. This would amount to a proposed 2.64 % rent increase, or from \$9.12 to \$ 11.95 per space, per month for the 403 rental spaces, as follows:

<u>Number of Spaces per Rent Level</u>		<u>Current General Base Rent</u>	<u>+</u>	<u>Proposed General Rent Increase</u>	<u>+</u>	<u>New Proposed Base Rent</u>	<u>% Increase</u>
1	Sp.	\$346.03	+	\$9.12	=	\$355.15	2.64%
1	Sp.	\$357.76	+	\$9.43	=	\$367.19	2.64%
1	Sp.	\$363.23	+	\$9.57	=	\$372.80	2.64%
6	Sp.	\$379.88	+	\$10.01	=	\$389.89	2.64%
21	Sp.	\$387.24	+	\$10.21	=	\$397.45	2.64%
1	Sp.	\$389.69	+	\$10.27	=	\$399.96	2.64%
71	Sp.	\$394.62	+	\$10.40	=	\$405.02	2.64%
34	Sp.	\$401.98	+	\$10.59	=	\$412.57	2.64%
42	Sp.	\$409.36	+	\$10.79	=	\$420.15	2.64%
52	Sp.	\$416.72	+	\$10.98	=	\$427.70	2.64%
86	Sp.	\$424.10	+	\$11.18	=	\$435.28	2.64%
29	Sp.	\$431.47	+	\$11.37	=	\$442.84	2.64%
51	Sp.	\$438.85	+	\$11.57	=	\$450.42	2.64%
2	Sp.	\$446.21	+	\$11.76	=	\$457.97	2.64%
5	Sp.	\$453.58	+	\$11.95	=	\$465.53	2.64%
<u>1</u>	Sp.	<u>\$0.00</u>	+	<u>\$0.00</u>	=	<u>\$0.00</u>	0.00%
<b>404</b>	<b>Sp.</b>	<b>\$2,003,313.96</b>	<b>+</b>	<b>\$52,794.57</b>	<b>=</b>	<b>\$2,056,108.53</b>	

In this case, the proposed 2.64% increase of the 403 affected base rents will be equal to an additional \$52,794.53 of rental income on a yearly basis.

**OPTION No. 2C - CONSUMER PRICE INDEX (50.0% METHOD)**

Next, the Board may wish to consider granting a general rent increase based on all or a portion of a sum equal to 50% of the 3.51% CPI change between August 2006 and December, 2007. This would amount to a proposed 1.76% rent increase, or from \$6.08 to \$7.97 per space, per month, as follows:

<u>Number of Spaces per Rent Level</u>		<u>Current General Base Rent</u>	+	<u>Proposed General Rent Increase</u>	=	<u>New Proposed Base Rent</u>	<u>% Increase</u>
1	Sp.	\$346.03	+	\$6.08	=	\$352.11	1.76%
1	Sp.	\$357.76	+	\$6.29	=	\$364.05	1.76%
1	Sp.	\$363.23	+	\$6.38	=	\$369.61	1.76%
6	Sp.	\$379.88	+	\$6.67	=	\$386.55	1.76%
21	Sp.	\$387.24	+	\$6.80	=	\$394.04	1.76%
1	Sp.	\$389.69	+	\$6.85	=	\$396.54	1.76%
71	Sp.	\$394.62	+	\$6.93	=	\$401.55	1.76%
34	Sp.	\$401.98	+	\$7.06	=	\$409.04	1.76%
42	Sp.	\$409.36	+	\$7.19	=	\$416.55	1.76%
52	Sp.	\$416.72	+	\$7.32	=	\$424.04	1.76%
86	Sp.	\$424.10	+	\$7.45	=	\$431.55	1.76%
29	Sp.	\$431.47	+	\$7.58	=	\$439.05	1.76%
51	Sp.	\$438.85	+	\$7.71	=	\$446.56	1.76%
2	Sp.	\$446.21	+	\$7.84	=	\$454.05	1.76%
5	Sp.	\$453.58	+	\$7.97	=	\$461.55	1.76%
1	Sp.	<u>\$0.00</u>	+	<u>\$0.00</u>	=	<u>\$0.00</u>	0.00%
404	Sp.	\$2,003,313.96	+	\$35,196.38	=	\$2,038,510.34	

In this case, the proposed 1.76 % increase of the 403 affected base rents will be equal to an additional \$35,196.38 of rental income on a yearly basis.

**OPTION No. 3A - ESTIMATED GROSS PROFIT MAINTENANCE ANALYSIS (100.0% CPI METHOD, BASED ON THE FINAL EXPENSE YEAR)**

The following is the Estimated Gross Profits Maintenance Analysis calculation utilizing a 100% of the CPI adjustment, for Colony Cove Mobile Estates, based on the final expense year being reviewed, or in this case, 2006-07. The purpose of the Estimated Gross Profit Maintenance Analysis is to help determine how a park has been operating since its last general rent increase and/or last hearing before the Board and the effects that inflation may have had on the park's profit level through the end of the expense year(s) being reviewed. The park's last general rent increase was granted on September 27, 2006. Given the legally required 90-day notification period, 2007 is the first year during which the effects of the last general rent increase could be fully observed. During the park's last hearing before the Board, a rent increase of \$6.23 per space, per month, for a range of from 1.39% to 1.83%, was granted.

Because the most current documentation submitted for this application is for 2006-07, staff does not have a full comparison year on which to perform an unadjusted gross profit maintenance analysis. However, staff will update the 2005 figures to show the full effects of inflation on the park's profit level in order to provide an as up-to-date as possible comparison figure. Staff will use 2005 as the base year for the comparison with 2006-07 as it was the last full year of expenses submitted by the owner and reviewed by the Board during the park's most recent public hearing on September 27, 2006.

\$ 30,128.28	Amount of Last General Rent Increase Granted by the Board on 9-27-06 & Collectible in 2007.
- 0.00	Amount of Last Rent Increase Granted due to Increased Operating Expenses (2005).
\$ 30,128.28	Amount of Last Rent Increase Granted by Board for Additional Gross Profit Maintenance.
\$ 30,128.28	Amount of Last Rent Increase Granted by Board for Additional Gross Profit Maintenance.
- 22,596.21	Amount of the Last Rent Increase Not Collectible in 2006-07 (9-Months, April-December 07).
\$ 7,532.07	Amount of the Last Rent Increase Collectible in 2006-07 (3-Months, January-March 07).

\$ 718,240.00	Actual Gross Profit for 2005.
+ 7,532.07	Amount of the Last Rent Increase Collectible in 2006-07 (3-Months, January-March 07).
\$ 733,304.14	Estimated Gross Profit Target for 2006-07.
\$ 733,304.14	Estimated Gross Profit Target for 2006-07.
x 6.19%	CPI Adjustment (12/05 through 03/07).
\$ 45,391.53	CPI Adjustment to Maintain Estimated Gross Profit through 2006-07.
\$ 733,304.14	Estimated Gross Profit Target for 2006-07.
+ 45,391.53	CPI Adjustment to Maintain Estimated Gross Profit through 2006-07.
\$ 778,695.67	Adjusted Gross Profit Target for 2006-07.
\$ 778,695.67	Adjusted Gross Profit Target for 2006-07.
- (192,910)	Actual Gross Profit for 2006-07.
\$ 971,605.67	Estimated Deficit in Gross Profit compared to Projected 100% CPI Maint. Level for 2006-07.

Therefore, the estimated gross profit of the park has not been maintained at a rate equal to or greater than 100% of the CPI change from December, 2005 through March, 2007.

Therefore, \$ 971,695.67 ÷ 403 rental spaces = \$4,411.16 ÷ 12 months = **\$ 200.93** per space, per month.

Accordingly, the Board may wish to consider granting a general rent increase based on all or a portion of a sum equal to 100% of the deficit in the estimated gross profit maintenance target for 2006-07. This will amount to a proposed rent increase of \$200.93 or (44.30% to 58.07%) per space, per month for 403 of the 404 spaces in the park, as follows:

<u>Spaces per</u>		<u>Current</u>		<u>Requested</u>		<u>New</u>	<u>%</u>
<u>Rent Level</u>		<u>General</u>	+	<u>General</u>	=	<u>Requested</u>	<u>Increase</u>
		<u>Base Rent</u>		<u>Rent Increase</u>		<u>Base Rent</u>	
1	Sp.	\$346.03	+	\$200.93	=	\$546.96	58.07%
1	Sp.	\$357.76	+	\$200.93	=	\$558.69	56.16%
1	Sp.	\$363.23	+	\$200.93	=	\$564.16	55.32%
6	Sp.	\$379.88	+	\$200.93	=	\$580.81	52.89%
21	Sp.	\$387.24	+	\$200.93	=	\$588.17	51.89%
1	Sp.	\$389.69	+	\$200.93	=	\$590.62	51.56%
71	Sp.	\$394.62	+	\$200.93	=	\$595.55	50.92%
34	Sp.	\$401.98	+	\$200.93	=	\$602.91	49.99%
42	Sp.	\$409.36	+	\$200.93	=	\$610.29	49.08%
52	Sp.	\$416.72	+	\$200.93	=	\$617.65	48.22%
86	Sp.	\$424.10	+	\$200.93	=	\$625.03	47.38%
29	Sp.	\$431.47	+	\$200.93	=	\$632.40	46.57%
51	Sp.	\$438.85	+	\$200.93	=	\$639.78	45.79%
2	Sp.	\$446.21	+	\$200.93	=	\$647.14	45.03%
5	Sp.	\$453.58	+	\$200.93	=	\$654.51	44.30%
1	Sp.	\$0.00	+	\$0.00	=	\$0.00	0.00%
404	Sp.	\$2,003,313.96	+	\$971,697.48	=	\$2,975,011.44	

In this case, the proposed \$200.93 increase of the 403 affected base rents will be equal to an additional \$971,697.48 of rental income on a yearly basis.

**OPTION No. 3B - ESTIMATED GROSS PROFIT MAINTENANCE ANALYSIS (75.0% CPI METHOD, BASED ON THE FINAL EXPENSE YEAR)**

\$ 733,304.14	Estimated Gross Profit Target for 2006-07.
x 4.64%	75% of the CPI Adjustment, (12-05 to 03-07).
\$ 34,025.31	CPI Adjustment to Maintain Estimated Gross Profit through 2006-07.
\$ 733,304.14	Estimated Gross Profit Target for 2006-07.
+ 34,025.31	CPI Adjustment to Maintain Estimated Gross Profit through 2006-07.
\$ 767,329.45	Adjusted Gross Profit Target for 2006-07.
\$ 767,329.45	Adjusted Gross Profit Target for 2006-07.
- (192,910)	Actual Gross Profit for 2006-07.
\$ 960,239.45	Estimated Deficit in Gross Profit compared to Projected 75% CPI Maintenance Level for 2005.

Therefore, the estimated gross profit target for the park (final expense year method – as adjusted by staff) has not been maintained at a rate equal to 75% of the CPI change from December, 2005, to March 2007.

Therefore, \$960,239.45 ÷ 403 rental spaces = \$2,382.73 ÷ 12 months = **\$198.56** per space, per month.

Accordingly, the Board may wish to consider granting a general rent increase based on all or a portion of a sum equal to 75% of the deficit in the estimated gross profit maintenance target for 2006-07. This will amount to a proposed rent increase of \$198.56 or (43.78% to 57.38%) per space, per month for all spaces in the park, as follows:

Spaces per Rent Level		Current General Base Rent	+	Requested General Rent Increase	=	New Requested Base Rent	% Increase
1	Sp.	\$346.03	+	\$198.56	=	\$544.59	57.38%
1	Sp.	\$357.76	+	\$198.56	=	\$556.32	55.50%
1	Sp.	\$363.23	+	\$198.56	=	\$561.79	54.67%
6	Sp.	\$379.88	+	\$198.56	=	\$578.44	52.27%
21	Sp.	\$387.24	+	\$198.56	=	\$585.80	51.28%
1	Sp.	\$389.69	+	\$198.56	=	\$588.25	50.95%
71	Sp.	\$394.62	+	\$198.56	=	\$593.18	50.32%
34	Sp.	\$401.98	+	\$198.56	=	\$600.54	49.40%
42	Sp.	\$409.36	+	\$198.56	=	\$607.92	48.50%
52	Sp.	\$416.72	+	\$198.56	=	\$615.28	47.65%
86	Sp.	\$424.10	+	\$198.56	=	\$622.66	46.82%
29	Sp.	\$431.47	+	\$198.56	=	\$630.03	46.02%
51	Sp.	\$438.85	+	\$198.56	=	\$637.41	45.25%
2	Sp.	\$446.21	+	\$198.56	=	\$644.77	44.50%
5	Sp.	\$453.58	+	\$198.56	=	\$652.14	43.78%
1	Sp.	\$0.00	+	\$0.00	=	\$0.00	0.00%
404	Sp.	\$2,003,313.96	+	\$960,236.16	=	\$2,963,550.12	

In this case, the proposed \$198.56 increase of the current base rents will be equal to an additional \$960,236.16 in additional income on a yearly basis from the 403 rent producing spaces in the park.

**OPTION No. 3C - ESTIMATED GROSS PROFIT MAINTENANCE ANALYSIS (50.0% CPI METHOD, BASED ON THE FINAL EXPENSE YEAR)**

\$ 733,304.14 Estimated Gross Profit Target for 2006-07.  
 x 3.10% 50% of the CPI Adjustment, (12-05 to 03-07).  
 \$ 22,732.43 CPI Adjustment to Maintain Estimated Gross Profit through 2006-07.

\$ 733,304.14 Estimated Gross Profit Target for 2006-07.  
 + 22,732.43 CPI Adjustment to Maintain Estimated Gross Profit through 2006-07.  
 \$ 756,036.56 Adjusted Gross Profit Target for 2006-07.

\$ 756,036.56 Adjusted Gross Profit Target for 2006-07.  
 - (192,910) Actual Gross Profit Target for 2006-07.  
 \$ 948,946.56 Estimated Excess in Gross Profit compared to Projected 50% CPI Maint. Level for 2006-07.

Therefore, the estimated gross profit target for the park (final expense year method – as adjusted by staff) has not been maintained at a rate equal to 50% of the CPI change from December, 2005, to March 2007.

Therefore, \$948,946.56 ÷ 403 rental spaces = \$2,354.71 ÷ 12 months = **\$196.23** per space, per month.

Accordingly, the Board may wish to consider granting a general rent increase based on all or a portion of a sum equal to 50% of the deficit in the estimated gross profit maintenance target for 2006-07. This will amount to a proposed rent increase of \$196.23 or (43.26% to 56.71%) per space, per month for all spaces in the park, as follows:

Spaces per Rent Level		Current General Base Rent	+	Requested General Rent Increase	=	New Requested Base Rent	% Increase
1	Sp.	\$346.03	+	\$196.23	=	\$542.26	56.71%
1	Sp.	\$357.76	+	\$196.23	=	\$553.99	54.85%
1	Sp.	\$363.23	+	\$196.23	=	\$559.46	54.02%
6	Sp.	\$379.88	+	\$196.23	=	\$576.11	51.66%
21	Sp.	\$387.24	+	\$196.23	=	\$583.47	50.67%
1	Sp.	\$389.69	+	\$196.23	=	\$585.92	50.36%
71	Sp.	\$394.62	+	\$196.23	=	\$590.85	49.73%
34	Sp.	\$401.98	+	\$196.23	=	\$598.21	48.82%
42	Sp.	\$409.36	+	\$196.23	=	\$605.59	47.94%
52	Sp.	\$416.72	+	\$196.23	=	\$612.95	47.09%
86	Sp.	\$424.10	+	\$196.23	=	\$620.33	46.27%
29	Sp.	\$431.47	+	\$196.23	=	\$627.70	45.48%
51	Sp.	\$438.85	+	\$196.23	=	\$635.08	44.71%
2	Sp.	\$446.21	+	\$196.23	=	\$642.44	43.98%
5	Sp.	\$453.58	+	\$196.23	=	\$649.81	43.26%
1	Sp.	\$0.00	+	\$0.00	=	\$0.00	0.00%
404	Sp.	\$2,003,313.96	+	\$948,968.28	=	\$2,952,282.24	

In this case, the proposed \$196.23 increase of the current base rents will be equal to an additional \$948,968.28 in additional income on a yearly basis from the 403 rent producing spaces in the park.

**OPTION No. 4 A-C, MAINTENANCE OF NET OPERATING INCOME (MNOI) (Adjusted by 100%, 75% and 50% of CPI on the Parks Net Operating Income).**

The explanation and discussion of these options are discussed in attached report from Dr. Baar's Analysis, Exhibit-D, pages D-22 to D-27 and the individual rent level calculations are shown in the staff exhibits, Exhibit-E, pages E-23 and E-24.

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**RECOMMENDATION**

The Mobilehome Park Rental Review Board may wish to take one of the following actions:

1. Grant the increase as requested, or
2. Grant a modified increase.

Staff has presented the owner's proposal as submitted in Exhibit-A (pages A-1 to A-33) and the park owner's fair return analysis in Exhibit-B (pages B-1 to B-223). The residents and their representatives have provided information through letters noted in Exhibit-C (pages C-1 to C-36). Staff has reviewed these documents and prepared this staff report and supplemental staff information noted in Exhibit-E (pages E-1 to E-25 and Dr. Baar has submitted his independent fair return analysis that is noted in Exhibit-D (pages D-1 to D-54). Based on a careful review of the income and expense documentation, Factors Numbers 1 through 11 as outlined in the Mobilehome Space Rent Control Ordinance, the revised implementation guidelines, and all the submitted documents, it is staff's recommendation that the board grant Colony Cove Mobile Estates a general rent increase of \$15.65 or (3.45% to 4.52%) per space, per month for 403 of the 404 spaces in the park at this time. This would raise the general base rents in the park to a range of \$361.68 to \$469.23 and to an average rent of \$429.90 per space, per month and represents a yearly increase of \$75,683.40.

Staff's recommendation is considered to be fair, just and reasonable for Colony Cove Mobile Estates at this time, based on the following findings:

1. Gross Income for Colony Cove Mobile Estates decreased by \$ 33,441 or 1.7 %, between 2005 and 2006-07.
2. Operating Expenses for the park increased by \$ 877,709 or 66.5 %, between 2005 and 2006-07. (This increase is entirely due to the increased debt service incurred by the new park owner to purchase the park.)
3. Due to the issues noted above, the Gross Profit of the park decreased \$ 911,150 or 126.9 % between 2005 and 2006-07 before factoring in the deteriorating effects of inflation on the park's gross income.
4. The local Consumer Price Index has increased by 3.51% from August 2006, (the most recent measurement available at the time of the park's last general rent increase hearing) and December, 2007, (the most recent measurement available at the time of the writing of this staff report).
5. Colony Cove Mobile Estates currently ranks second in its comparison group of three mobilehome parks in terms of average base rent. The park would continue to rank second in this comparison group if staff's recommendation is approved.
6. The period of time since the Board's September 27, 2006 meeting, at which the Board last heard a rent increase request by Colony Cove Mobile Estates, and tonight's meeting, is 17-1/2 months, or one year, five and a half months.
7. The park's property taxes have increased \$16,463 or 9.6%, between 2005 and 2006-07.



8. The park's common area electric costs have increased by \$4,364 or 26.1%, between 2005 and 2006-07.
9. The park's common area natural gas costs have increased \$3,251 or 18.2%, between 2005 and 2006-07.
10. The park's water costs have increased \$5,241, or 6.6%, between 2005 and 2006-07.
11. The park's trash collection costs have increased by \$4,145 or 10.5%, between 2005 and 2006-07.
12. Staff's inspection of the park on Wednesday, February 6, 2008, indicates that the park is still providing a better level of maintenance, overall upkeep, management and over-sight as compared to past years by the prior park ownership and management.

**EXHIBITS**

- A. 2006-07 Application Materials for Colony Cove Mobile Estates. (Pgs. A-1 to A-33)
- B. Fair Return Analysis by John P. Neet, MAI. (Pgs. B-1 to B-223)
- C. Resident Comment Letters. (Pgs. C-1 to C-36)
- D. Fair Return Analysis by Dr. Kenneth Baar. Pgs. (Pgs. D-1 to D-54)
- E. Staff Exhibits. (Pgs. E-1 to E-25)

KF:kf MRKB/CC-2006-07/CC-SR

# **EXHIBIT 12**

**ANDERSON & BRABANT, INC.**

REAL ESTATE APPRAISERS AND CONSULTANTS

353 W. NINTH AVENUE

ESCONDIDO, CALIFORNIA 92025-5032

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June 5, 2008

William W. Wynder, Esq.  
Aleshire & Wynder, LLP  
South Bay Center  
1515 West 190<sup>th</sup> Street  
South Tower, Suite 565  
Gardena, CA 90248

Re: Rent Increase Application  
Colony Cove Mobile Estates

Dear Mr. Wynder:

I have completed a review of a fair return analysis for Colony Cove Mobile Estates prepared by John P. Neet, MAI. His report of September 25, 2007 provides three analyses and opinions of the increase in rent that would be necessary to provide a fair return for Colony Cove Mobile Estates for fiscal year April 2006 through March 2007.

I have also reviewed his updated analysis dated May 28, 2008, that was forwarded to the City on May 29, 2008. In addition I have analyzed Neet's review of Dr. Kenneth Baar's analysis of Colony Cove Mobile Estates. Finally, I have reviewed an appraisal of Colony Cove Mobile Estates, dated March 13, 2007, with a date of value of March 30, 2006, that was prepared by Rob Detling of PGP Valuation Inc.

The purpose of my reviews has been to make a determination as to the adequacy and appropriateness of the analyses and conclusions in the Neet and Detling reports.

**Client/Intended Use**

My client for this assignment is Aleshire & Wynder, LLP, City Attorney to the City of Carson. The report has been prepared to be provided to the Carson Mobilehome Park Rent Review Board ("MRRB") to provide an independent and expert assessment of the submittals noted above, and to assist the MRRB in understanding the meaning and significance of such submittals in connection with a pending application for a so-called "fair return" rent increase application. The author, and Anderson & Brabant, Inc., are not responsible for any unintended use of this report.

**Extent Of The Review Process**

I have read the reports prepared by John Neet and Rob Detling that are previously referenced. I have also reviewed the Application for Mobilehome Space Rent Increase submitted by the park owner, Dr. Kenneth Baar's report and the City Staff Report

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**Comments On The Reports Reviewed**

**1. Neet's Investment Basis**

Neet's fair return analysis (page 1) discusses the purchase of Colony Cove by the current owner on April 4, 2006, at a price of \$22,990,000. He then adds certain costs and fees and concludes that the adjusted purchase price was \$23,050,060.99. Next, he references the appraisal by PGP Valuation Inc. as of March 30, 2006, with a market value conclusion of \$23,000,000 and comments that this appraisal confirms that the market value estimate essentially equals the purchase price. The PGP appraisal is included in the Addenda to his report.

**2. Neet's Net Operating Income Analysis is Inconsistent With the PGP Appraisal.**

While Neet reports a net operating income of \$304,838 the PGP appraisal estimates that the net operating income is \$1,110,009. Neet's Net Operating Income Analysis begins by referencing the park owner's financial statements for the period April 2006 through March 2007 (page 7). He makes it clear that he has not reviewed or adjusted the reported income and expenses, except for several adjustments that are specifically addressed in the ordinance or the guidelines. His figures for income, expenses and net operating income are as follows:

Reported Collected Income	\$2,184,527
Adjustments	( 152,586)
Adjusted Collected Income	\$2,031,941
Reported Operating Expenses	\$1,829,297
Adjustments	( 102,194)
Adjusted Operating Expenses	\$1,727,103
Net Operating Income	\$ 304,838

In the PGP Valuation Inc. appraisal that Neet cites in order to justify the purchase price there is an income analysis that indicates a potential gross income of \$2,207,884 which is very close to Neet's reported collected income before the adjustments. However, in the PGP appraisal, the operating expenses total \$1,038,535 while the operating expenses reported by Neet are \$1,829,297 and the adjusted expenses total \$1,727,103.

As indicated, the PGP appraisal estimates a net operating income of \$1,110,009 while Neet has a net operating income of only \$304,838. Consequently, the applicant is using a net operating income (\$1,110,009) to justify the purchase price, but another net operating

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Aleshire & Wynder, LLP  
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income (\$304,838) that is only a fraction of that amount to justify the park owners need for a rent increase in order to obtain a fair return on the same purchase price.

Obviously, these two sets of expense and net operating income estimates cannot both be correct. The PGP estimates could be viewed as more credible. PGP had access to historical expenses from the subject property and they also referenced expense comparables from other parks. PGP included a complete discussion and analysis of the various expenses. On the other hand Neet simply used the reported expenses, with his relatively minor adjustments, and even indicates that he did not review the reported expenses. Consequently, it is my professional judgment that the MRRB could, in the exercise of its discretion, give little weight to or choose not to have confidence in Neet's estimates of expenses and net operating income.

Neet also uses a 9.0% rate of return (overall capitalization rate) to calculate the increase in rent necessary to produce a fair return. This 9.0% rate was arrived at after he considered discount rates from published sources and a history of rent increases for parks in the City of Carson. His analysis fails to include any overall capitalization rates from comparable sales.

However, the PGP appraisal did include overall capitalization rates from six comparable sales that ranged from 3.9% to 6.3% and PGP selected a capitalization rate of 4.75 percent for the analysis. In other words, the park owner purchased the property on the basis of a 4.75 percent capitalization rate, while Neet claims the park owner is entitled to a 9.0% rate of return. Again, it is my professional judgment that the MRRB could, in the exercise of its discretion, give little weight to or choose not to have confidence in the reasonableness of Neet's conclusion.

### **3. Applicant is Not Entitled to Re-define Fair Rate of Return**

In my professional experience and judgment, even if this applicant were entitled to a fair return on investment, such an entitlement does not follow regardless of the purchase price paid for this mobilehome park property. If a given applicant chooses to overpay for the purchase of a mobilehome park property (meaning a purchase price above the market value) such an applicant would not, in my professional experience and judgment, be entitled to a fair return on an unreasonable investment.

In addition, if any given applicant purchases a mobilehome park property at market value, such an applicant is not, in my professional experience and judgment, entitled to redefine the term "fair return" for purposes of a rent increase application. In my judgment, this appears to be what is happening in connection with this pending "fair return" application.

The applicant and his experts claim that the property was purchased at a market price, based on a 4.75% capitalization rate (See PGP appraisal, page 51). The purchase price is

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justified as being a market rate purchase based upon an extensive analysis of overall capitalization rates from comparable parks. The applicant then elects to utilize a 9.0% rate, that Neet chooses to call a "discount rate" (but is really a capitalization rate), to calculate the increase in rent necessary to produce a fair return (see Neet report, Net Operating Income Analysis, page 7). If you perform an analysis that uses one rate to justify a purchase price and then use a higher rate for the fair return analysis, a rent increase will always be indicated. However, in my judgment this amounts to an unjustified re-defining of the meaning of "fair return."

Neet's 9.0% capitalization rate is not obtained from direct comparison of capitalization rates from mobile home parks in the State of California, but from an analysis of discount rates from a national survey, from which he deducts an appreciation rate. This entire analysis is not grounded in a direct comparison with capitalization rates from mobile home parks (the relevant comparison to have been utilized) and is extremely misleading, and in my professional experience and judgment could, if the MRRB so determined, in the exercise of its discretion, be rejected as a basis for a "fair return" application.

#### **4. Neet's Net Income to Equity Analysis is Not Credible**

Based upon the documents I have reviewed, the applicant apparently leveraged his investment in Colony Cove with a loan in the amount of \$18,000,000. The annual debt service (interest only) for this loan is reportedly \$1,309,236. This results in Neet's calculation of a negative equity dividend (cash flow after debt service) of \$1,004,398. Neet has determined that the "required equity dividend amounts to \$580,750" and that results in his conclusion that a rent increase of \$327.78 is necessary to produce a fair return.

However, according to the PGP appraisal, when the property was acquired by the applicant it was not producing anything approaching the income necessary to cover the debt service of \$1,309,236 and provide a positive cash flow of \$580,750. In fact with a net income before debt service of \$1,110,009 and debt service of \$1,309,236 the equity dividend projected for the first year of the applicant's ownership was a negative \$199,227. The Neet analysis fails to take into account any equity dividend rates extracted from sales of mobile home parks to support his use of an 11.5% rate. Consequently, it is my professional judgment that the MRRB could, in the exercise of its discretion, give little weight to or choose not to have confidence in this aspect of the Neet analysis.

#### **5. Neet's Net Operating Income (Including Debt Service) Analysis Defies Logic**

Neet's Net Operating Income (Including Debt Service) Analysis produces a meaningless result. He calculates an equity dividend (cash flow after debt service) that should be analyzed with a rate that considers the equity investment. Instead, he uses a rate (9%) that is applicable for the total property value, not just the equity investment. I know of no professional appraisal publication that would support such an analysis and it is my

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William W. Wynder, Esq.  
Aleshire & Wynder, LLP  
June 5, 2008  
Page 5

professional judgment that the MRRB could, in the exercise of its discretion, give little weight to or choose not to have confidence in, the Neet NOI calculations.

**6. Comments on Neet's Criticism of Dr. Baar's Report**

In his report dated March 24, 2008, Neet objects that Dr. Baar did not compare Colony Cove's return with other investments having commensurate risk. This criticism is not convincing when you consider that such an analysis by Neet led him to conclude that the applicant was entitled to a 9% capitalization rate, when comparable sales suggested that a 4.75% capitalization rate was appropriate.

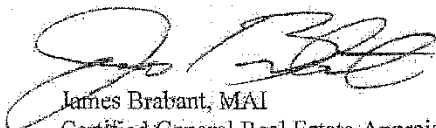
Neet is also critical of Dr. Baar for concluding that mobile home parks are a "risk free" investment. He goes on to list some of the risks associated with the ownership of mobile home parks. However, the opinion actually expressed by Dr. Baar on page 35 was that "after a park has been constructed and occupied with mobilehomes, there is virtually no rental risk." This conclusion has been supported and documented in countless studies and I have personally observed this phenomena in over 30 years of appraising mobile home parks.

This is not to say that there is never any vacancy in any mobile home park. However, in well located parks like this one, they typically remain full and if an older home is moved out, a new one is then moved in and there is virtually no vacancy. The truth of this generalization can be seen in the investment survey data utilized by Mr. Neet. In the Investor Survey by Robert G. Watts that Neet utilizes in his analyses, the discount rates for Mobile Home Park acquisitions are lower than the rates for apartments, office buildings, industrial properties and retail facilities. The lower rate for mobilehome park investments is reflective, at least in part, of the lower risk of vacancy.

This review appraisal is followed by a listing of Assumptions and Limiting Conditions as well as a signed Certification and a Statement of Qualifications. Thank you for the opportunity to be of service.

Sincerely,

ANDERSON & BRABANT, INC.



James Brabant, MAI  
Certified General Real Estate Appraiser  
OREA Appraiser No. AG002100

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**ASSUMPTIONS AND LIMITING CONDITIONS**

**This appraisal is subject to the following special assumptions and limiting conditions:**

1. This is a *Review Appraisal* which is intended to comply with the reporting requirements set forth under Standards Rule 3 and Advisory Opinion 6 of the Uniform Standards of Professional Appraisal Practice (USPAP). The information contained in this report is specific to the needs of the client and any other intended users for the intended use as stated in this report. Anderson & Brabant, Inc. is not responsible for unauthorized use of this report.

**This appraisal is subject to the following general assumptions and limiting conditions:**

1. It is assumed that information furnished to us by our client, including maps, cost estimates, and legal descriptions, is substantially correct.

2. No responsibility is assumed for matters legal in character, nor do we render an opinion as to title, which is assumed to be held in fee simple interest as of the date of valuation unless otherwise specified.

3. It is assumed that the property is readily marketable, free of all liens and encumbrances except any specifically discussed herein, and under responsible ownership and management.

4. Photographs, plat, and maps furnished in this appraisal are to assist the reader in visualizing the property. No survey of the property has been made and no responsibility has been assumed in this matter.

5. It is assumed that there are no legitimate environmental or ecological reasons that would prevent orderly development of the land to its highest and best use under economically feasible conditions.

6. Soils engineering studies have not been provided to Anderson & Brabant, Inc. It is, therefore, assumed that there are no hidden or unapparent conditions of the property such as hazardous or toxic wastes and/or other subsoil conditions which would render it more or less valuable. No responsibility is assumed for such conditions or for engineering which might be required to discover such factors.

7. The appraiser is not qualified to detect hazardous waste and/or toxic materials. Any comment by the appraiser that might suggest the possibility of the presence of such substances should not be taken as confirmation of the presence of hazardous waste and/or toxic materials. Such determination would require investigation by a qualified expert in the field of environmental assessment. The presence of substances such as asbestos, urea-formaldehyde foam insulation, or other potentially hazardous materials may affect the value of the property.

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*Anderson & Brabant, Inc.*

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The appraiser's value estimate is predicated on the assumption that there is no such material on or in the property that would cause a loss in value unless otherwise stated in this report. No responsibility is assumed for any environmental conditions, or for any expertise or engineering knowledge required to discover them. The appraiser's descriptions and resulting comments are the result of the routine observations made during the appraisal process.

8. Possession of this report, or a copy thereof, does not carry with it the right of publication. It may not be used for any purpose by any person other than the party to whom it is addressed without the written consent of Anderson & Brabant, Inc., and in any event, only with proper written qualification and only in its entirety.

9. Disclosure of the contents of this appraisal report is governed by the by-laws and regulations of the Appraisal Institute. Neither all nor any part of the contents of this report (especially reference to the Appraisal Institute or the MAI designation) shall be disseminated to the public through advertising media, public relations media, news media, sales media, or any other public means of communication without prior written consent and approval of Anderson & Brabant, Inc.

10. The submission of this report constitutes completion of the services authorized. It is submitted on the condition that the client will provide Anderson & Brabant, Inc. customary compensation relating to any subsequent required depositions, conferences, additional preparation or testimony.

11. The valuation estimate is of surface rights only and the mineral rights, if any, have been disregarded.

12. No warranty is made as to the seismic stability of the subject property.

13. It is assumed that all applicable zoning and land use regulations and restrictions have been complied with, unless a nonconformity has been stated, defined, and considered in this appraisal report.

14. It is assumed that all required licenses, certificates of occupancy, or other legislative or administrative authority from any local, state, or national governmental or private entity or organization have been or can be obtained or renewed for any use on which the value estimates contained in this report are based.

15. It is assumed that the utilization of the land and improvements is within the boundaries or property lines of the property described and that there is no encroachment or trespass unless otherwise stated in this report.

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*Anderson & Brabant, Inc.*

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**APPRAISER'S CERTIFICATE**

I do hereby certify that, to the best of my knowledge and belief, ...

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are our personal, impartial, and unbiased professional analyses, opinions and conclusions.
3. I have no present or prospective future interest in the property that is the subject of this report, and no personal interest with respect to the parties involved.
4. I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
5. My engagement in this assignment was not contingent upon developing or reporting predetermined results.
6. My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
7. My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Practice of the Appraisal Institute and the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation.
8. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
9. I have made a personal inspection of the property that is the subject of this report.
10. No one provided significant professional assistance to the person signing this report.
11. As of the date of this report, I have completed the requirements of the continuing education program of the Appraisal Institute.

  
James Brabant, MAI  
State Certification No. AG002100

June 5, 2008  
Date

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*Anderson & Brabant, Inc.*

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**QUALIFICATIONS OF THE APPRAISER**

James Brabant, MAI  
Anderson & Brabant, Inc.  
353 W. Ninth Avenue  
Escondido, CA 92025  
(760) 741-4146 Ext. 312

I. Resident of San Diego County since 1977

II. **Educational Background:**

- A. University of Southern California, B.S. degree in Real Estate — 1960
- B. School of Theology at Claremont, Master of Theology — 1966
- C. Professional Education Completed:
  - 1. Appraisal Institute
    - a. "Basic Appraisal Principles, Methods and Techniques" — Course I-A
    - b. "Capitalization Theory and Techniques" — Course I-B
    - c. "Urban Properties" — Course II
    - d. "Investment Analysis" — Course IV
    - e. "Standards of Professional Practice"
    - f. "Litigation Valuation"
    - g. Special Applications of Appraisal Analysis Course 301
  - 2. Lincoln Graduate Center
    - a. Manufactured Housing Appraisal Course 669
  - 3. Continuing Education (Partial List):
    - Eminent Domain Case Update, 10/95, 3/97, 10/07
    - Business Practice and Ethics, 6/07
    - San Diego Apartment & Housing Seminar, 10/98, 5/07
    - San Diego Economic Forecasts, 2/05, 2/07
    - Appraiser as Expert Witness, 12/06
    - USPAP Course, 9/04, 5/06
    - Deal and Development Analysis – Downtown S.D., 9/05
    - Litigation Seminar, 11/04
    - Appraising Manufactured Housing, 1/04
    - Economic and Real Estate Forum, 09/02
    - Gramm-Leach-Bliley Act, 10/01
    - Condemnation on Trial (Participant), 5/00
    - Attorneys, Appraisers & Real Estate, 9/98
    - Damages, Diminution & Mitigation, 8/98
    - Appraisal of Partial Interests, 6/98
    - Mitigation Land Update & Valuation Issues, 4/97
    - Federal & State Laws & Regulations Workshop, 9/95
    - Fair Lending, 12/94
    - Partial Acquisition, 9/94

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*Anderson & Brabant, Inc.*

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**Qualifications of the Appraiser — James Brabant, MAI**  
**Page Two**

**III. Professional Affiliations:**

- A. Member, Appraisal Institute, MAI (1985 President, San Diego Chapter)
- B. Realtor Member, North County Association of Realtors
- C. Member, International Right of Way Association
- D. Real Estate Brokers License, State of California
- E. Teaching Credential, State of California, Community College Level
- F. Certified General Real Estate Appraiser (AG002100)  
Office of Real Estate Appraisers, State of California

**IV. Appraisal Experience:**

Co-Owner — Anderson & Brabant, Inc., Since 1979  
Co-Owner — Robert M. Dodd & Associates, Inc., 1977 - 1979  
Appraisal Manager — California First Bank, Huntington Beach, California, 1974 - 1977  
Staff Appraiser — California First Bank, San Diego, California, 1972 - 1974  
Staff Appraiser — O. W. Cotton Co., San Diego, California, 1970 - 1972  
Staff Appraiser — Davis Brabant, MAI, Huntington Park, California, 1960 - 1962

**V. Teaching Experience:**

Southwestern College, Chula Vista, California, "Real Estate Appraisal"

**VI. Expert Witness:**

Superior Court, San Diego, Los Angeles, Riverside, and San Bernardino Counties  
Rent Control Hearings: Oceanside, Escondido, Ventura, Concord, Yucaipa, Carpinteria, Palmdale, San Marcos  
Various Arbitration Hearings  
Assessment Appeals Board, Riverside County and San Diego County  
Federal Bankruptcy Court, San Diego County & Santa Barbara County  
United States District Court — Northern District of California

**VII. Types of Appraisals:**

Residential Property:	Single-family residence, condominiums, apartments, subdivisions, existing and proposed
Commercial Property:	Office buildings, shopping centers, office condominiums, etc., existing and proposed
Industrial Property:	Single/multi-tenant, business parks, etc., existing and proposed
Vacant Land:	Industrial, commercial, residential, and rural
Agricultural:	Ranches, avocado and citrus groves, etc.
Special Purpose Appraisals:	Leasehold estates, possessory interest, historical appraisals, etc.
Mobile Home Parks:	For a variety of purposes including rent hearings, park closure, park conversions, failure to maintain litigation, etc.

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*Anderson & Brabant, Inc.*

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**Qualifications of the Appraiser — James Brabant, MAI**  
**Page Three**

**VIII. Partial List of Appraisal Clients:**

**Banks**

Bank of America  
Bank of New York  
City National Bank  
Downey Savings  
Fidelity Federal Bank  
First Interstate Bank  
First Pacific National Bank  
Flagship Federal Savings  
Great Western Bank  
Industrial Bank of Japan  
Palomar Savings & Loan  
Redlands Federal Bank  
Union Bank of California  
Wells Fargo Bank

**Government Agencies and Municipalities**

California Department of  
Transportation/Caltrans  
Carlsbad Municipal Water District  
City of Carlsbad  
City of Chula Vista  
City of Colton  
City of Concord  
City of Escondido  
City of Laguna Beach  
City of La Mesa  
City of Salinas  
City of San Bernardino  
City of San Diego  
City of San Marcos  
City of Vista  
City of Yucaipa  
County of San Diego  
Metropolitan Water District  
Oceanside Unified School District  
Pacific Telephone  
Poway Municipal Water District  
Ramona Unified School District  
SANDAG (San Diego Assoc. of Govts.)  
San Diego County Water Authority  
San Diego Unified Port District  
San Marcos Unified School District  
U.S. Depart. of the Interior  
Bureau of Indian Affairs  
U.S. Department of Justice

**Law Firms**

Asaro, Keagy, Frceland, McKinley & Bartz  
Best, Best & Krieger  
Daley & Heft  
Endeman, Lincoln, Turek & Heater  
Foley, Lardner, Weissburg & Aronson  
Fulbright & Jaworski  
Gray, Cary, Ware & Freidenrich  
Higgs, Fletcher & Mack  
Latham & Watkins  
Lounsbury, Ferguson, Altona & Peak  
Luce, Forward, Hamilton & Scripps  
McDonald & Allen  
McInnis, Fitzgerald, Rees, Sharkey & McIntyre  
O'Melveny & Meyers  
Post, Kirby, Noonan & Sweat  
Procopio, Cory, Hargreaves & Savitch  
Rutan & Tucker  
Singer, Richard  
Sullivan Wertz McDade & Wallace  
Tatro & Zamoyiski  
Thorsnes Bartolotta & McGuire  
Worden Williams, APC

**Title Companies**

Chicago Title  
Fidelity National Title Insurance  
First American Title  
St. Paul Title  
Title Insurance & Trust

**Others**

Avco Community Developers  
Coldwell Banker  
Dixieline Lumber  
Golden Eagle Insurance  
National Steel & Shipbuilding Co.  
Northern San Diego County Hospital District  
Prudential Insurance Corp.  
Rosenow, Spevacek, Group  
San Diego Gas & Electric Co.  
San Luis Rey Downs (Vessels)  
Steefel, Levitt & Weiss  
Tellwright-Campbell, Inc.  
Transamerica Relocation Service  
Vedder Park Management

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**PARTIAL LIST OF MOBILE HOME AND MOBILE HOME PARK APPRAISALS**

**Rent Studies**

Carlsbad, California	Rancho Carlsbad
Chula Vista, California	Brentwood Mobile Home Park
Concord, California	Brookview Park
	Concord Mobile Home Park
	Vista Del Monte Trailer & Mobile Home Park
	Town & Country Mobile Village
	The Trees
El Cajon, California	Rancho Laguna Mobile Home Park
Escondido, California	Escondido Mobile Park West
	Town & Country Mobile Home Park
	Valley Parkway Mobile Home Park
Hollister, California	Mission Oak Mobile Home Park
La Mesa, California	La Mesa Terrace
Malibu, California	Paradise Cove
Oceanside, California	Laguna Vista Mobile Home Park
Pacific Palisades, California	Palisades Bowl
Rocklin, California	Sierra Lakes Adult Mobile Home Community
Salinas, California	Alisal Country Estates
San Marcos, California	El Dorado Mobile Home Park
	San Marcos Mobile Estates

**Mobile Home Park Conversions**

Carlsbad, California	Rancho Carlsbad
Carson, California	Carson Harbor Village
Colton, California	Rancho Mediterranean
Escondido, California	Champagne Village (formerly Lawrence Welk Village)
Fallbrook, California	Rancho Monserate
Lakeside, California	Lake Jennings Mobile Home Park
Palm Desert	Indian Springs Mobile Home Park
Palm Springs, California	El Dorado Mobile Home Park
Paso Robles, California	Rancho Paso Mobile Home Park
Vista, California	Vista Cascade
Woodland Hills, California	Mountain View Estates

**Mobile Home Park Subdivisions**

Thousand Palms, California	Ivey Ranch
Vista, California	Vista Del Mar
	Shadowridge Crossing

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*Anderson & Brabant, Inc.*

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**For Possible Acquisition**

Colton, California	Lake Cadena Mobile Home Park
	Reche Canyon Mobile Home Park
El Cajon, California	Glenview Mobile Home Park
Montclair, California	Villa Montclair
	Hacienda
San Bernardino, California	Glen Aire
	Friendly Village
	Pacific Palms
	Ninth Street
	Royal Coach
	Rancho Meridian
	Meridian Terrace
	Sequoia Plaza
	Orangewood
San Marcos, California	Palomar Estates East Mobile Home Park
	Palomar Estates West Mobile Home Park
	Rancho Mobile Home Park
	San Marcos View Estates
	Twin Oaks Valley
	Villa Vista
Vista, California	Sycamore Creek

**For Estate Purposes**

Camarillo, California	Camarillo Mobile Home Park
Cathedral City, California	Royal Palms Mobile Home Park
Chino, California	Pembroke Downs Mobile Home Park
La Habra, California	Friendly Village La Habra
Lakeside, California	Lakefront Mobile Home Park
Modesto, California	Friendly Village-Modesto
Newbury Park, California	Vallecito Mobile Home Park
Rancho Cucamonga, CA	Alta Laguna Mobile Estates
Riverside, California	Rancho Caballero Mobile Home Park
San Juan Capistrano, CA	Rancho Alipaz Mobile Home Park
San Pedro, California	Palos Verdes Shores Mobile Home Park
Scotts Valley, California	Whispering Pines Mobile Home Park
Simi, California	Friendly Village Simi Mobile Home Park
Temecula, California	Heritage Mobile Home
Ventura, California	Colony Mobile Home Park
	Lemonwood Mobile Home Park
Victorville, California	Victor Villa Mobile Home Park
West Covina, California	Friendly Village West Covina
Tempe, Arizona	Tempe Cascade Mobile Estates

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**Litigation Purposes**

Agua Dolce, California	Hacienda Vasquez
Anaheim, California	Western Skies Mobile Home Park
Apple Valley, California	Rancho de Las Brisas
Barstow, California	Chateau Barstow
Bloomington, California	Cedar Village Mobile Home Park
Carlsbad, California	Rancho Carlsbad
Carson, California	Avalon Carson Mobile Estates
Castaic, California	Paradise Ranch Mobile Home Park
Colton, California	Lake Cadena Mobile Home Park
Cotati, California	Countryside Mobile Park Estates
	Ramble Creek Mobile Park
	Sierra Mobile Home Park
Cypress, California	Lincoln Center Mobile Home Park
Dana Point, California	Beachwood Mobile Home Park
East Palo Alto, California	Palo Mobile Estates
Grand Terrace, California	Terrace Pines Mobile Home Park
Hollister, California	Mission Oaks Mobile Home Park
Laguna Beach, California	Laguna Terrace Mobile Home Park
Lodi, California	Villa Cerezos Mobile Home Park
Long Beach, California	Belmont Shores Mobile Home Park
	Friendly Village Mobile Home Park
	Villa Park
Malibu, California	Paradise Cove
Modesto, California	Pinewood Meadows
Napa, California	Wine Country MHP
Occanside, California	El Camino 76 Mobile Estates
Palm Springs, California	Western Village Mobile Home Park
Pedley, California	Santiago Mobile Home Park
Pomona, California	Mission Boulevard
Poway, California	Poway Royal Mobile Home Estates
Sacramento, California	Regency Mobile Home Park
San Rafael, California	Contempo Marin
Santa Cruz, California	De Anza Santa Cruz
Santa Monica, California	Village Trailer Park
Santee, California	Highlands Mobile Home Park
	Meadowbrook Mobile Home Park
Stanton, California	Katella Mobile Home Park
Van Nuys, California	Park Royale
Windsor, California	Royal Manor Mobile Home Park
	Windsorland Mobile Home Park

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# **EXHIBIT 13**



1 ALESHIRE & WYNDER, LLP  
SUNNY K. SOLTANI, State Bar No. 209774  
2 *ssoltani@awattorneys.com*  
JUNE S. AILIN, State Bar No. 109498  
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5 *jmalawy@awattorneys.com*  
MARGARET W. ROSE, State Bar No. 298965  
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18881 Von Karman Avenue, Suite 1700  
8 Irvine, California 92612  
Telephone: (949) 223.1170  
9 Facsimile: (949) 223.1180

10 Attorneys for Defendants  
CITY OF CARSON and CITY OF  
11 CARSON MOBILEHOME PARK  
RENTAL REVIEW BOARD

12 **UNITED STATES DISTRICT COURT**  
13 **CENTRAL DISTRICT OF CALIFORNIA**  
14

15 COLONY COVE PROPERTIES, LLC  
16 a Delaware limited liability company,

17 Plaintiff,

18 v.

19 CITY OF CARSON, a municipal  
corporation; CITY OF CARSON  
20 MOBILEHOME PARK RENTAL  
REVIEW BOARD, a public  
21 administrative body; and DOES 1 to 10,  
inclusive,

22 Defendants.  
23  
24  
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26  
27  
28

Case No. CV14-03242 PSG (PJWx)

Assigned to Hon. Philip S. Gutierrez  
Courtroom 880, Roybal

**DEFENDANTS' EXPERT WITNESS  
DISCLOSURE [FRCP 26(a)(2)]**

First Amended Complaint filed:  
April 16, 2015  
Trial date: April 5, 2016





1 Pursuant to FRCP 26(a)(2), Defendants hereby provide the following disclosures  
2 of information about witnesses who may be used at trial to present expert testimony:

3 Pursuant to FRCP 26(a)(2)(B), Defendants designate Kenneth K. Baar, Ph.D. A  
4 copy of the report required by FRCP 26(a)(2)(B) from Dr. Baar is attached hereto.

5 Pursuant to FRCP 26(a)(2)(C), Defendants designate Kenneth K. Baar, Ph.D.  
6 The subject matter upon which Dr. Baar is expected to present evidence pursuant to  
7 FRCP 26(a)(2)(C) is: (1) Factors and methods that the Carson Rent Board may consider  
8 in setting allowable rent increases; (2) Rent Board precedent in regard to consideration  
9 of increases in debt service in its decisions setting allowable rents; (3) The reasonability  
10 of the conclusions of the Park Owner's experts, Dr. Michael St. John and John Neet, in  
11 regard to what rent increase would be reasonable under the standards in the ordinance  
12 and constitutional fair return standards, in Colony Cove's applications to the Board in  
13 its first two years of park ownership.

14 A summary of the facts and opinions to which Dr. Baar is expected to testify  
15 pursuant to FRCP 26(a)(2)(C) is as follows:

16 1. The City's Mobilehome Park Rent Ordinance specifies factors that the Rent  
17 Board shall consider in setting allowable rent increases. In addition, in applying  
18 its rent adjustment standards constitutional fair return standards shall be met,  
19 including a requirement that base year net operating income is not frozen. In  
20 setting maximum allowable rents, the Board may consider increases in the CPI,  
21 the objective of protecting residents from excessive increases, fair return  
22 analyses based on rate of return on investment, gross profit maintenance,  
23 maintenance of net operating income standards, comparable rents, and other  
24 factors that are relevant.

25 2. In applying the Rent Ordinance, since 1996 the Board has not permitted  
26 substantial rent increases based on increases in debt service.

27 3. Dr. St. John's conclusion that a pre-rent control base year must be used in a  
28 maintenance of net operating income analysis is not consistent with the  
Guidelines. Mr. Neet's conclusions about what rate is a fair rate of return on  
investment are not reasonable.





1 Pursuant to FRCP 26(a)(2)(C), Defendants designate James L. Brabant, MAI.  
2 The subject matter upon which Mr. Brabant is expected to present evidence pursuant to  
3 FRCP 26(a)(2)(C) is:

- 4 1. A critical analysis of Plaintiff's fair return analysis for Colony Cove Mobile  
5 Estates, as contained in two reports by John Neet, MAI, and one report by  
6 Rob Detling of PGP Valuation Inc. The Neet reports are dated September 25,  
7 2007, and May 28, 2008, while the PGP report is dated March 13, 2007.
- 8 2. Based on Mr. Brabant's critical analysis above, his professional judgment that  
9 the Carson Mobilehome Park Rental Review Board (MRRB) could, in the  
10 exercise of its discretion, give little weight to or choose not to have  
11 confidence in Neet's fair return analyses.

12 A summary of the facts and opinions to which Mr. Brabant is expected to  
13 testify pursuant to FRCP 26(a)(2)(C) is as follows:

- 14 1. **Neet references and utilizes the PGP appraisal in his fair return analysis.**  
15 The PGP appraisal is included in the Addenda to Neet's report and has a  
16 conclusion of market value at \$23,000,000 as of March 30, 2006. Neet  
17 comments that this appraisal confirms that the market value estimate  
18 essentially equals the purchase price. Colony Cove was purchased by the  
19 current owner on April 4, 2006, at a price of \$22,990,000.
- 20 2. **Neet's net operating income analysis is inconsistent with the PGP**  
21 **Appraisal.** In his fair return analysis, Neet reports a net operating income of  
22 \$304,838 while the PGP appraisal estimates the net operating income at  
23 \$1,110,009 for the same period. Thus, Neet uses the much higher net income  
24 from PGP to justify the purchase price of the park, but uses a much lower net  
25 income for his fair return calculation. Obviously, these two numbers cannot  
26 both be true and suggest his analysis is flawed. It is illogical for the applicant  
27 to use a net operating income of \$1,110,009 to justify the purchase price, but  
28 another net operating income of \$304,838, that is only a fraction of that  
amount, to justify the park owner's need for a rent increase in order to obtain  
a fair return on the same purchase price.
3. **Neet's estimate of net operating income is not credible.** Neet references  
the park owner's financial statements for the period April 2006 through  
March 2007, but makes it clear that he has not reviewed or adjusted the



1 reported income and expenses, except for several adjustments that are  
2 specifically addressed in the City ordinance or guidelines. This is in contrast  
3 with the PGP analysis of expenses, where they had access to historical  
4 expenses from the subject property and also referenced expense comparables  
5 from other parks. Consequently, Neet's calculation of net operating is not  
6 considered to be credible.

7 **4. Neet (nor the Applicant) is not entitled to re-define fair rate of return.**

8 Neet claims that Colony Cove was purchased at a market price, based on a  
9 4.75% capitalization rate. The purchase price is identified as being a market  
10 rate purchase based upon an extensive analysis of overall capitalization rates  
11 from comparable parks. However, Neet then elects to utilize a 9.0% rate, that  
12 he chooses to call a "discount rate" (but is actually utilized as a capitalization  
13 rate), to calculate the increase in rent necessary to produce a fair return. If  
14 you perform an analysis that uses one rate to justify a purchase price and then  
15 use a higher rate for the fair return analysis, a rent increase will always be  
16 indicated. However, in my judgment this amounts to an unjustified re-  
17 defining of the meaning of "fair return."

18 **5. Neet's 9.0% rate of return is not credible.** Neet's 9.0% rate of return is  
19 obtained from a national survey of discount rates from investors, from which  
20 he deducts an appreciation rate. When you deduct a growth rate from a  
21 discount rate, you approximate a capitalization rate. However, in this case,  
22 his rate does not come close to approximating a capitalization rate for a  
23 mobile home park in the State of California. Rates of return in the State of  
24 California are very different than national averages. Furthermore,  
25 capitalization rates for parks in California were readily available, as indicated  
26 in the PGP appraisal. The PGP appraisal included capitalization rates from  
27 six comparable sales of mobile home parks in California that ranged from  
28 3.9% to 6.3% and PGP selected a rate of 4.75%.

**6. Neet's net income to equity analysis is not credible.** The purchase of  
Colony Cove in 2006 was reportedly leveraged with a loan of \$18,000,000  
and an annual debt service (interest only) of \$1,309,236. This resulted in a  
negative cash flow (equity dividend) of \$1,004,398. Neet opines that an  
equity dividend rate of 11.5% would be fair and, if they were achieving that,  
it would produce a positive cash flow of \$580,750. His calculations suggest  
that a rent increase of \$327.78 would be required for a fair return. However,  
his analysis fails to take into account any equity dividend rates extracted from  
sales of mobile home parks. In addition, according to the PGP appraisal,  
when the property was acquired by the applicant it was not producing  
anything approaching the income necessary to cover the debt service of

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1 \$1,309,236 and provide a positive cash flow of \$580,750. In fact, with a net  
2 income before debt service of \$1,110,009 and debt service of \$1,309,236 the  
3 equity dividend projected for the first year of the applicant's ownership was a  
4 negative \$199,227.

5 **7. Neet's Net Operating Income (Including Debt Service) Analysis Defies**  
6 **Logic.** He calculates an equity dividend (cash flow after debt service) that  
7 should be analyzed with a rate that considers the equity investment. Instead,  
8 he uses a rate (9%) that he previously uses for the total property value, not  
9 just the equity investment. I know of no professional appraisal publication or  
10 appraiser that would support such an analysis.

11 **8. Conclusion.** Based on the above analyses, it is my professional judgment  
12 that the Carson Mobilehome Park Rental Review Board (MRRB) could, in  
13 the exercise of its discretion, give little weight to or choose not to have  
14 confidence in Neet's fair return analyses.

15 Defendants reserve the right to supplement these disclosures and to designate  
16 additional experts and witnesses as necessary to rebut any experts designated by any  
17 other party to the instant action.

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DATED: January 11, 2016

ALESHIRE & WYNDER, LLP

By: 

Jeff M. Malawy

Attorneys for Defendants CITY OF  
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MOBILEHOME PARK RENTAL  
REVIEW BOARD